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RECORD, CASE No. 14,524.

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1891.

TERM No. 1064.

THE METROPOLITAN NATIONAL BANK, PLAINTIFF IN ERROR,

vs.

SUMNER E. CLAGGETT AND CHARLES F. CHICKERING, ADMINISTRATORS OF JAMES H. PAINE, DECEASED.

IN ERROR TO THE SUPREME COURT OF THE STATE OF NEW YORK.

FILED MARCH 17, 1891.

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INDEX.

	Original.	Print.
Statement	1	1
Summons	2	1
Complaint	3	2
Answer	56	33
Order for trial	60	36
Findings of fact	61	36
Conclusions of law	71	43
Judgment	72	43
Exceptions	73	43
Notice of appeal to general term	74	44
Opinion of trial term	75	44
Order for judgment	80	47
Judgment at general term	81	48

JUDD & DETWEILER, PRINTERS, WASHINGTON, D. C., SEPTEMBER 26, 1891.

	Original.	Print.
Notice of appeal to court of appeals	82	48
Remittitur from court of appeals	83	49
Order for judgment on remittitur	86	50
Judgment on remittitur	87	50
Bond	88	51
Citation	91	52
Proof of service of citation	91½	52
Assignment of errors	92	53
Writ of error	94	54
Clerk's certificate	97	55
Opinion of general term	98	55
Affidavit of no opinion in court of appeals	102	56

1 Supreme Court.

SUMNER E. CLAGGETT and CHARLES F. CHICKERING, as Administrators of Goods, Chattels, and Credits of James H. Paine,
against
METROPOLITAN NATIONAL BANK.

Suit begun June 4, 1886.
Complaint served June 4, 1886.
Amended answer served July 12, 1886.
There has been no change of parties. Their names are given in full above.

M. J. D.

2 Supreme Court, New York County.

SUMNER E. CLAGGETT and CHARLES F. CHICKERING, as Administrators of the Goods, Chattels, and Effects of James H. Paine, Deceased, Plaintiffs,
against
THE METROPOLITAN NATIONAL BANK, Defendant.

Summons, with Notice.

To the above-named defendant:

You are hereby summoned to answer the complaint in this action and to serve a copy of your answer on the plaintiffs' attorney within twenty days after the service of this summons, exclusive of the day of service, and in case of your failure to appear or answer judgment will be taken against you by default for the relief demanded in the complaint.

Dated May 27th, 1886.

THEO. H. SWIFT,
Plaintiffs' Attorney.

P. O. and office address, No. 25 Chambers street, N. Y.

Notice.

Take notice that upon your default to appear or answer the
3 above summons judgment will be taken against you for the sum of twelve thousand three hundred dollars, with interest from May 21st, 1886, and with costs of this action.

THEO. H. SWIFT,
Plaintiffs' Attorney.

Supreme Court.

Trial in New York county.

SUMNER E. CLAGGETT and CHARLES F. CHICKERING, as Administrators of the Goods, Chattels, and Effects of James H. Paine, Deceased, Plaintiffs,
vs.
THE METROPOLITAN NATIONAL BANK, Defendant.
} Complaint.

The plaintiffs, complaining of the defendant, allege:

First.

That on or about the 23d day of December, 1885, one James H. Paine died intestate at the city of New York; that on the 25th day of February, 1886, the plaintiffs were duly appointed by the surrogate of the county of New York administrators of the goods, chattels, and credits of deceased and qualified as such; that at the time of the making, execution, and delivery of the promissory note hereinafter mentioned "the Metropolitan bank was a moneyed cor-
4 poration duly organized under the laws of the State of New York entitled 'An act to authorize the business of banking,' passed April 18th, 1838, and the acts additional to and amendatory thereof, and was carrying on the business of banking in the city of New York and elsewhere in said State under and by the corporate name of 'the Metropolitan bank.'"

That as such corporation it had the power and authority under the laws of said State to execute its promissory notes, commonly called bank bills, payable on demand, and put the same in circulation as money, and had deposited with the superintendent of banks the requisite security therefor.

That on or about the 14th day of March, 1865, the said "Metropolitan bank," under and in pursuance of the act of the Congress of the United States entitled "An act to provide a national currency secured by the pledge of United States bonds, and to provide for the circulation and redemption thereof," approved June 3d, 1864, and also of the provisions of an act of the legislature of the State of New York entitled "An act enabling banks of this State to become associations for the purpose of banking under the laws of the United States and under resolutions and actions of its board of directors and its stockholders," passed March 9th, 1865, became and still is an association for carrying on the business of banking under the laws of the United States under and by the corporate name of the Metropolitan National bank, and by virtue of the laws of the State of New York and its own voluntary action the said defendant, "The Metropolitan National Bank," received and became vested with all the assets, real and personal, of the said "Metropolitan bank," including the securities charged with the payment of bank bills, and assumed and became liable to pay and discharge all the liabilities thereof, including the notes and bank bills hereinafter described.

5 That on the 20th day of November, 1858, the said "The

Metropolitan bank" duly made, executed, and put in circulation as money its certain promissory note or bank bill, dated that day, whereby it promised to pay to the bearer, on demand, one hundred dollars, and for a valuable consideration, prior to the year 1862, the said bill became the property of said James H. Paine. The plaintiffs, as such administrators, on their appointment and qualification became and still are the lawful owners and holders thereof.

That on the 21st day of May, 1886, they duly presented said note to the Metropolitan National bank and demanded payment of the same, which was refused; that there is now due and unpaid thereon the sum of one hundred dollars, with interest thereon from the 21st day of May, 1886.

Second.

And for a second cause of action the plaintiffs allege all the facts hereinbefore alleged in the first cause of action set forth in this complaint, except the issue of the note or bill there set forth; and further allege that on the 28th day of June, 1859, the said The Metropolitan bank duly made, executed, and put in circulation as money its certain promissory note or bank bill, dated that day and numbered "1866," whereby it promised to pay to the bearer, on demand, one hundred dollars, and for a valuable consideration, prior to the year 1862, the same became the property of the said James H. Paine. The plaintiffs, as such administrators, on their appointment and qualification became and still are the lawful owners and holders thereof.

That on the 21st day of May, 1886, they duly presented said note to the Metropolitan National bank and demanded payment of the same, which was refused; that there is now due and unpaid thereon the sum of one hundred dollars, with interest from the 21st day of May, 1886.

6 Third.

And for a third cause of action the plaintiffs allege all the facts hereinbefore alleged in the first cause of action set forth in this complaint, except the issue of the note or bill there set forth; and further allege—

That on the 28th day of June, 1859, the said "The Metropolitan bank" duly made, executed, and put in circulation as money its certain promissory note or bank bill, dated that day and numbered 1905, whereby it promised to pay to the bearer, on demand, one hundred dollars, and for a valuable consideration, prior to the year 1862, the same became the property of the said James H. Paine. The plaintiffs, as such administrators, on their appointment and qualification became and still are the lawful owners and holders thereof.

That on the 21st day of May, 1886, they duly presented the said note to "the Metropolitan National bank" and demanded payment of the same, which was refused; that there is now due and unpaid thereon the sum of one hundred dollars, with interest thereon from the 21st day of May, 1886.

Fourth.

And for a fourth cause of action the plaintiffs allege all the facts hereinbefore alleged in the first cause of action set forth in this complaint, except the issue of the note or bill there set forth; and further alleges:

That on the 28th day of June, 1859, the said "The Metropolitan bank" duly made, executed, and put in circulation as money its certain promissory note or bank bill, dated that day and numbered 1923, whereby it promised to pay to the bearer, on demand, one hundred dollars, and for a valuable consideration, prior to the year 1862, the same became the property of the said James
7 H. Paine. The plaintiffs, as such administrators, on their appointment and qualification became and still are the lawful owners and holders thereof; that on the 21st day of May, 1886, they duly presented said note to the Metropolitan National bank and demanded payment of the same, which was refused; that there is now due and unpaid thereon the sum of one hundred dollars, with interest thereon from the 21st day of May, 1886.

Fifth.

And for a fifth cause of action the plaintiffs allege all the facts hereinbefore alleged in the first cause of action set forth in this complaint, except the issue of the note or bill there set forth; and further allege—

That on the 28th day of June, 1859, the said "The Metropolitan bank" duly made, executed, and put in circulation as money its certain promissory note or bank bill, dated that day and numbered 1935, whereby it promised to pay to the bearer, on demand, the sum of one hundred dollars, and for a valuable consideration, prior to the year 1862, the same became the property of the said James H. Paine. The plaintiffs, as such administrators, on their appointment and qualification became and still are the lawful owners and holders thereof; that on the 21st day of May, 1886, they duly presented said bill to the Metropolitan bank and demanded payment of the same, which was refused; that there is now due and unpaid thereon the sum of one hundred dollars, with interest thereon from the 21st day of May, 1886.

Sixth.

And for a sixth cause of action the plaintiffs allege all the facts hereinbefore alleged in the first cause of action set forth in
8 this complaint, except the issue of the note or bill there set forth; and further allege—

That on the 28th day of June, 1859, the said "The Metropolitan bank" duly made, executed, and put in circulation as money its certain promissory note or bank bill, dated that day and numbered 1894, whereby it promised to pay to the bearer, on demand, one hundred dollars, and for a valuable consideration, prior to the year 1862, the same became the property of the said James H. Paine. The plaintiffs, as such administrators, on their appointment and

qualification became and still are the lawful owners and holders thereof.

That on the 21st day of May, 1886, they duly presented said note to the Metropolitan National bank and demanded payment of the same, which was refused; that there is due and unpaid thereon the sum of one hundred dollars, with interest thereon from the 21st day of May, 1886.

Seventh.

For a seventh cause of action the plaintiffs allege all the facts and circumstances hereinbefore alleged in the first cause of action set forth in this complaint, except the issue of note or bill there set forth; and further allege—

That on the 28th dayof June, 1859, thesaid "The Metropolitan bank" duly made, executed, and gave in circulation as money its certain promissory note or bank bill, dated that day and numbered 1950, whereby it promised to pay to the bearer, on demand, one hundred dollars, and for a valuable consideration, prior to the year 1862, the same became the property of the said James H. Paine. The plaintiffs, as such administrators, on their appointment and qualification became and still are the lawful owners and holders thereof; that on the 21st day of May, 1886, they duly pre-
9 sented said note to the Metropolitan National bank and demanded payment of the same, which was refused; that there is due and unpaid thereon the sum of one hundred dollars, with interest from the 21st day of May, 1886.

Eighth.

For the eighth cause of action the plaintiffs allege all the facts hereinbefore alleged in the first cause of action set forth in this complaint, except the issue of the note or bill there set forth; and further allege—

That on the sixth day of March, 1860, the said "The Metropolitan bank" duly made, executed, and put in circulation as money its certain promissory note or bill, dated that day and numbered "1971," whereby it promised to pay to bearer, on demand, the sum of one hundred dollars, and for a valuable consideration, prior to the year 1862, the same became the property of the said James H. Paine. The plaintiffs, as such administrators, on their appointment and qualification became and still are the lawful owners and holders thereof; that on the 21st day of May, 1886, they duly presented said notes to the Metropolitan National bank and demanded payment of the same, which was refused; that there is now due and unpaid thereon the sum of one hundred dollars, with interest thereon from the 21st day of May, 1886.

Ninth.

And for a ninth cause of action the plaintiffs allege all the facts hereinbefore alleged in the first cause of action set forth in this complaint, except the issue of the note or bill there set forth; and further

allege that on the 6th day of March, 1860, the said "The Metropolitan bank" duly made, executed, and put in circulation as money its certain promissory note or bank bill, dated that day and
10 numbered 1995, whereby it promised to pay to the bearer, on demand, one hundred dollars, and for a valuable consideration, prior to the year 1862, the same became the property of the said James H. Paine. The plaintiffs, as such administrators, on their appointment and qualification became and still are the lawful owners and holders thereof; that on the 21st day of May, 1886, they duly presented the note to the Metropolitan National bank and demanded payment of the same, which was refused; that there is due and unpaid thereon the sum of one hundred dollars, with interest thereon from the 21st day of May, 1886.

Tenth.

For a further cause of action the plaintiffs allege all the facts hereinbefore alleged in the first cause of action set forth in this complaint, except the issue of the note or bill there set forth; and further allege that on the 6th day of March, 1860, the said "The Metropolitan bank" duly made, executed, and put in circulation as money its certain promissory note or bank bill, dated that day and numbe*r*ing "2007," whereby it promised to pay to the bearer, on demand, one hundred dollars, and for a valuable consideration, prior to the year 1862, the same became the property of the said James H. Paine. The plaintiffs, as such administrators, on their appointment and qualification became and still are the lawful owners and holders thereof; that on the 21st day of May, 1886, they duly presented said note to the Metropolitan National bank and demanded payment, which was refused; that there is now due and unpaid thereon the sum of one hundred dollars, with interest thereon from the 21st day of May, 1886.

Eleventh.

11 For a further cause of action plaintiffs allege all the facts heretofore alleged in the first cause of action set forth in this complaint, except the issue of the note or bill there set forth; and further allege that on the 6th day of March, 1860, the Metropolitan bank made, executed, and put in circulation as money its certain promissory note or bank bill, dated and numbered 2074, whereby it promised to pay bearer, on demand, one hundred dollars, and for a valuable consideration, prior to the year 1862, the same became the property of the said James H. Paine. The plaintiffs, as such administrators, on their appointment and qualification became and still are the lawful owners and holders thereof.

That on the 21st day of May, 1886, they duly presented said note to "the Metropolitan National bank" and demanded payment of the same, which was refused. There is now due and unpaid thereon the sum of one hundred dollars, with interest from the 21st day of May, 1886.

Twelfth.

For a further cause of action plaintiffs allege all the facts heretofore alleged in the first cause of action set forth in this complaint, except the issue of the note there set forth; and further allege that on the 19th day of May, 1860, the said "The Metropolitan bank" duly made, executed, and put in circulation as money its certain promissory note or bank bill, dated that day and numbered "2032," whereby it promised to pay to bearer, on demand, one hundred dollars, and for a valuable consideration, prior to the year 1862, the same became the property of the said James H. Paine. The plaintiffs, as such administrators, on their appointment and qualification became and still are the lawful owners and holders thereof; that on the 21st day of May, 1886, they duly presented said note to "the Metropolitan National bank" and demanded payment of the
12 same, which was refused; that there is due and unpaid thereon the sum of one hundred dollars, with interest thereon from the 21st day of May, 1886.

Thirteenth.

For a further cause of action plaintiffs allege all the facts hereinbefore alleged in the first cause of action set forth in this complaint, except the issue of the note or bill there set forth, and further allege—

That on the 19th day of May, 1860, the said "The Metropolitan bank" duly made, executed, and put in circulation as money its certain promissory note or bank bill, dated that day and numbered "2037," whereby it promised to pay to the bearer, on demand, one hundred dollars, and for a valuable consideration, prior to the year 1862, the same became the property of the said James H. Paine. The plaintiffs, as such administrators, on their appointment and qualification became and still are the lawful owners and holders thereof; that on the 21st day of May, 1886, they duly presented said note to "the Metropolitan National bank" and demanded payment of the same, which was refused; that there is now due and unpaid thereon the sum of one hundred dollars, with interest thereon from the 21st day of May, 1886.

Fourteenth.

For a further cause of action plaintiffs allege all the facts hereinbefore alleged in the first cause of action set forth in this complaint, except the issue of the note there set forth; and further allege that on the 19th day of May, 1860, the said "The Metropolitan bank" duly made, executed, and put in circulation as money its certain promissory note or bank bill, and dated that day and num-
13 bered "2044," whereby it promised to pay to the bearer, on demand, one hundred dollars, and for a valuable consideration, prior to the year 1862, the same became the property of the said James H. Paine. The plaintiffs, as such administrators, on their appointment and qualification became and still are the lawful owners and holders; that on the 21st day of May, 1886, they duly presented said note to the "Metropolitan National bank" and demanded

payment of the same, which was refused; that there is now due and unpaid thereon the sum of one hundred dollars, with interest thereon from the 21st day of May, 1886.

Fifteenth.

For a further cause of action plaintiffs allege all the facts hereinbefore alleged in the first cause of action set forth in this complaint, except the issue of the note there set forth; and further allege that on the 19th day of May, 1860, the said "The Metropolitan bank" duly made, executed, and put in circulation as money its certain promissory note or bank bill, and dated that day and numbered "2047," whereby it promised to pay to the bearer, on demand, one hundred dollars, and for a valuable consideration, prior to the year 1862, the same became the property of the said James H. Paine. The plaintiffs, as such administrators, on their appointment and qualification became and still are the lawful owners and holders thereof.

That on the 21st day of May, 1886, they duly presented said note to the "Metropolitan National bank" and demanded payment of the same, which was refused; that there is now due and unpaid thereon the sum of one hundred dollars, with interest thereon from the 21st day of May, 1886.

Sixteenth.

For a further cause of action the plaintiffs allege all the
14 facts hereinbefore alleged in the first cause of action set forth in this complaint, except the issue of the note there set forth; and further allege—

That on the 19th day of May, 1860, the said "The Metropolitan bank" duly made, executed, and put in circulation its certain promissory note or bank bill, dated this day and numbered "2045," whereby it promised to pay to bearer, on demand, one hundred dollars, and for a valuable consideration, prior to the year 1862, the same became the property of the said James H. Paine. The plaintiffs, as such administrators, upon their appointment and qualification became and still are the lawful owners and holders thereof; that on the 21st day of May, 1886, they duly presented said note to "the Metropolitan National bank" and demanded payment of the same, which was refused; that there is now due and unpaid thereon the sum of one hundred dollars, with interest from the 21st day of May, 1886.

Seventeenth.

For a further cause of action plaintiffs allege all the facts hereinbefore alleged in the first cause of action set forth in this complaint, except the issue of the note there set forth; and further allege—

That on the 19th day of May, 1860, the said "The Metropolitan bank" duly made, executed, and put in circulation as money its certain promissory note or bank bill, dated that day and numbered "2050," whereby it promised to pay the bearer, on demand, one hundred dollars, and for a valuable consideration, prior to the year

1862, the same became the property of the said James H. Paine. The plaintiffs, as such administrators, on their appointment and qualification became and still are the lawful owners and holders thereof; that on the 21st day of May, 1886, they duly presented said note to "the Metropolitan National bank" and demanded payment of the same, which was refused; that there is now due and unpaid thereon the sum of one hundred dollars, with interest thereon from the 21st day of May, 1886.

Eighteenth.

For a further cause of action plaintiffs allege all the facts hereinbefore alleged in the first cause of action set forth; and further allege—

That on the 4th day of September, 1860, the said "The Metropolitan bank" duly made, executed, and put in circulation as money its certain promissory note or bank bill, dated that day and numbered "2070," whereby it promised to pay to the bearer, on demand, one hundred dollars; for a valuable consideration, prior to the year 1862, the same became the property of the said James H. Paine. The plaintiffs, as such administrators, on their appointment and qualification became and still are the lawful holders and owners thereof; that on the 21st day of May, 1886, they duly presented said note to "Metropolitan National bank" and demanded payment of the same, which was refused; that there is now due and unpaid thereon the sum of one hundred dollars, with interest from the 21st day of May, 1886.

Nineteenth.

For a further cause of action plaintiffs allege all the facts hereinbefore alleged in the first cause of action set forth in this complaint, except the issue of the note there set forth; and further allege that on the 4th day of September, 1860, the said "The Metropolitan bank" duly made, executed, and put in circulation as money its certain promissory note or bank bill, dated that day and numbered "2071," whereby it promised to pay to the bearer, on demand, one hundred dollars, and for a valuable consideration, prior to the year 1862, the same became the property of the said James H. Paine. The plaintiffs, as such administrators, on their appointment and qualification became and still are the lawful owners and holders thereof.

That on the 21st day of May, 1886, they duly presented said note to "the Metropolitan National bank" and demanded payment of the same, which was refused; that there is now due and unpaid thereon the sum of one hundred dollars, with interest thereon since the 21st day of May, 1886.

Twentieth.

For a further cause of action the plaintiffs allege all the facts hereinbefore alleged in the first cause of action set forth in this complaint, except the issue of the note there set forth; and further

allege that on the 4th day of September, 1860, the said "The Metropolitan bank" duly made, executed, and put in circulation as money its certain promissory note or bank bill, dated that day and numbered 2112, whereby it promised to pay to the bearer, on demand, the sum of one hundred dollars, and for a valuable consideration, prior to the year 1862, the same became the property of the said James H. Paine. The plaintiffs, as such administrators, upon their appointment and qualification became and still are the lawful owners and holders thereof; that on the 21st day of May, 1886, they duly presented said note to the Metropolitan National bank and demanded payment of the same, which was refused; that there is now due and unpaid thereon the sum of one hundred dollars, with interest thereon from the 21st day of May, 1886.

Twenty-first.

For a further cause of action the plaintiffs allege all the
17 facts hereinbefore alleged in the first cause of action set forth in this complaint, except the issue of the note therein set forth; and further allege—

That on the 4th day of September, 1860, the said "The Metropolitan bank" duly made, executed, and put in circulation as money its certain promissory note or bank bill, dated that day and numbered "2009," whereby it promised to pay to the bearer, on demand, one hundred dollars. For a valuable consideration, prior to the year 1862, the same became the property of the said James H. Paine. The plaintiffs, as such administrators, on their appointment and qualification became and still are the lawful owners and holders thereof; that on the 21st day of May, 1886, they duly presented said note to "the Metropolitan National bank" and demanded payment of the same, which was refused; that there is now due and unpaid thereon the sum of one hundred dollars, with interest thereon from the 21st day of May, 1886.

Twenty-second.

For a further cause of action plaintiffs allege all the facts hereinbefore alleged in the first cause of action set forth in this complaint, except the issue of the note there set forth; and further allege that on the 4th day of September, 1860, the said "The Metropolitan bank" duly made, executed, and put in circulation as money its certain promissory note or bank bill, dated this day and numbered "2096," whereby it promised to pay to the bearer, on demand, one hundred dollars, and for a valuable consideration, prior to the year 1862, the same became the property of the said James H. Paine. The plaintiffs, as such administrators, on their appointment and qualification became and still are the lawful owners and holders thereof; that on the 21st day of May, 1886, they duly presented said
18 note to "the Metropolitan National bank" and demanded payment thereof, which was refused; that there is now due and unpaid thereon the sum of one hundred dollars, with interest thereon from the 21st day of May, 1886.

Twenty-third.

For a further cause of action the plaintiffs allege all the facts hereinbefore alleged in the first cause of action set forth in this complaint, except the issue of the note there set forth; and further allege—

That on the 4th day of September, 1860, the said "The Metropolitan bank" duly made, executed, and put in circulation as money its certain promissory note or bank bill, dated that day and numbered "2100," whereby it promised to pay to the bearer, on demand, one hundred dollars, and for a valuable consideration, prior to the year 1862, the same became the property of the said James H. Paine. The plaintiffs, as such administrators, on their appointment and qualification became and still are the lawful owners and holders thereof.

That on the 21st day of May, 1886, they duly presented said note to "the Metropolitan National bank" and demanded payment of the same, which was refused; that there is now due and unpaid thereon the sum of one hundred dollars, with interest thereon from the 21st day of May, 1886.

Twenty-fourth.

For a further cause of action the plaintiffs allege all the facts hereinbefore alleged in the first cause of action set forth in this complaint, except the issue of the note there set forth; and further allege—

That on the 5th day of December, 1860, the said "The Metropolitan bank" duly made, executed, and put in circulation as money its certain promissory note or bank bill, dated that day and numbered "2176," whereby it promised to pay to the bearer, on
19 demand, one hundred dollars, and for a valuable consideration, prior to the year 1862, the same became the property of the said James H. Paine. The plaintiffs, as such administrators, on their appointment and qualification duly became and now are the lawful owners and holders thereof.

That on the 21st day of May, 1886, they duly presented said note to "the Metropolitan National bank" and demanded payment thereof, which was refused; that there is now due and unpaid thereon the sum of one hundred dollars, with interest thereon from the 21st day of May, 1886.

Twenty-fifth.

For a further cause of action the plaintiffs allege all the facts hereinbefore alleged in the first cause of action set forth in this complaint, except the issue of the note or bill there set forth; and further allege that on the 5th day of December, 1860, the said "The Metropolitan bank" duly made and executed and put in circulation as money its certain promissory note or bank bill, dated that day and numbered "2164," whereby it promised to pay, on demand, one hundred dollars, and for a valuable consideration, prior to the year 1862, the same became the property of the said James H.

Paine. The plaintiffs, as such administrators, on their appointment and qualification became and still are the lawful owners and holders thereof; that on the 21st day of May, 1886, they duly presented said note to "the Metropolitan National bank" and demanded the payment of the same, which was refused; that there is now due and unpaid thereon the sum of one hundred dollars and interest thereon from the 21st day of May, 1886.

Twenty-sixth.

For a further cause of action the plaintiffs allege all the
20 facts hereinbefore alleged in the first cause of action set forth in this complaint, except the issue of the note or bill there set forth; and further allege—

That on the 5th day of December, 1860, the said "The Metropolitan bank" duly made, executed, and put in circulation as money its certain promissory note or bank bill, dated that day and numbered "2217," whereby it promised to pay to the bearer, on demand, one hundred dollars, and for a valuable consideration, prior to the year 1862, the same became the property of the said James H. Paine. The plaintiffs, as such administrators, on their appointment and qualification became and still are the lawful owners and holders thereof; that on the 21st day of May, 1886, they duly presented said note to "the Metropolitan National bank" and demanded payment of the same, which was refused; that there is now due and unpaid thereon the sum of one hundred dollars, with interest thereon from the 21st day of May, 1886.

Twenty-seventh.

For a further cause of action the plaintiffs allege all the facts hereinbefore alleged in the first cause of action set forth in this complaint, except the issue of the note or bill there set forth; and further alleged—

That on the 5th day of December, 1860, the said "The Metropolitan bank" duly made, executed, and put in circulation as money its certain promissory note or bank bill, dated that day and numbered "2170," whereby it promised to pay to the bearer, on demand, one hundred dollars, and for a valuable consideration, prior to the year 1862, the same became the property of the said James H. Paine. The plaintiffs, as such administrators, on their appointment and qualification duly became and still are the lawful owners and holders thereof; that on the 21st day of May, 1886, they duly
21 presented said note to "the Metropolitan National bank" and demanded payment of the same, which was refused.

That there is now due and unpaid thereon the sum of one hundred dollars, with interest thereon from the 21st day of May, 1886.

Twenty-eighth.

For a further cause of action plaintiffs allege all the facts hereinbefore alleged in the first cause of action set forth in this complaint, except the issue of the note or bill set forth; and further allege—

That on the 5th day of December, 1860, the said "The Metropolitan bank" made, executed, and put in circulation as money its certain promissory note or bank bill, dated that day and numbered "2180," whereby it promised to pay to the bearer, on demand, one hundred dollars, and for a valuable consideration, prior to the year 1862, the same became the property of the said James H. Paine. The plaintiffs, as such administrators, on their appointment and qualification duly became and now are the lawful owners and holders thereof; that on the 21st day of May, 1886, they duly presented said note to "the Metropolitan National bank" and demanded payment thereof, which was refused; that there is now due — unpaid the sum of one hundred dollars, with interest thereon from the 21st day of May, 1886.

Twenty-ninth.

For a further cause of action plaintiffs allege that all the facts hereinbefore alleged in the first cause of action as set forth in this complaint, except the issue of the note or bill set forth; and further allege—

That on the 5th day of December, 1860, the said "The Metropolitan bank" duly made, executed, and put in circulation as money its certain promissory note or bank bill, dated that day and numbered "2186," whereby it promised to pay to the bearer, on demand, one hundred dollars, and for a valuable consideration, prior to the year 1862, the same became the property of the said James H. Paine. The plaintiffs, as such administrators, on their appointment and qualification duly became and now are the lawful owners and holders thereof; that on the 21st day of May, 1886, they duly presented said note to "the Metropolitan National bank" and demanded payment of the same, which was refused; that there is now due and unpaid thereon the sum of one hundred dollars, with interest from the 21st day of May, 1886.

Thirtieth.

And for a further cause of action the plaintiffs allege all the facts hereinbefore alleged in the first cause of action set forth in this complaint, except the issue of the note or bill there set forth; and further allege—

That on the 5th day of December, 1860, the said "The Metropolitan bank" duly made, executed, and put in circulation as money its certain promissory note or bank bill, dated that day and numbered "2183," whereby it promised to pay to the bearer, on demand, one hundred dollars, and for a valuable consideration, prior to the year 1862, the same became the property of the said James H. Paine. The plaintiffs, as such administrators, on their appointment and qualification duly became and now are the lawful owners and holders thereof.

That on the 21st day of May, 1886, they duly presented said note or bill to the Metropolitan National bank and demanded payment thereon, which was refused; that there is now due and unpaid the

sum of one hundred dollars, with interest from the 21st day of May, 1886.

23

Thirty-first.

For a further cause of action the plaintiffs allege all the facts hereinbefore alleged in the first cause of action set forth in this complaint, except the issue of the note or bill there set forth; and further allege—

That on the 5th day of December, 1860, the said "The Metropolitan bank" duly made, executed, and put in circulation as money its certain promissory note or bank bill, dated that day and numbered 2141, whereby it promised to pay to the bearer, on demand, one hundred dollars, and for a valuable consideration, prior to year 1862, the same became the property of said James H. Paine. The plaintiffs, as such administrators, on their appointment and qualification became and still are the lawful owners and holders thereof.

That on the 21st day of May, 1886, they presented the note to "the Metropolitan National bank" and demanded payment of the same, which was refused; that there is now due and unpaid thereon the sum of one hundred dollars, with interest thereon from the 21st day of May, 1886.

Thirty-second.

For a further cause of action the plaintiffs allege all the facts hereinbefore alleged in the first cause of action set forth in this complaint, except the issue of the note or bill there set forth; and further allege—

That on the 5th day of December, 1860, the said Metropolitan bank made, executed, and put in circulation as money its certain promissory note or bank bill, dated that day and numbered 2182, whereby it promised to pay to the bearer, on demand, one hundred dollars, and for a valuable consideration, prior to the year 1862, the same became the property of the said James H. Paine. The

24 plaintiffs, as such administrators, on their appointment and qualification became and now are the lawful owners and holders thereof.

That on the 21st day of May, 1886, they duly presented said note to "the Metropolitan National bank" and demanded payment of the same, which was refused; that there is now due and unpaid thereon the sum of one hundred dollars, with interest thereon from the 21st day of May, 1886.

Thirty-third.

For a further cause of action plaintiffs allege all the facts hereinbefore alleged in the first cause of action set forth in the complaint, except the issue of the note there set forth; and further alleged—

That on the 5th day of December, 1860, the said "The Metropolitan bank" made, executed, and put in circulation as money its certain promissory note or bank bill, dated that day and numbered 2137, whereby it promised to pay to the bearer, on demand, one hundred dollars, and for a valuable consideration, prior to the year 1862,

the same became the property of the said James H. Paine. The plaintiffs, as such administrators, on their appointment and qualification became and still are the lawful owners and holders thereof.

That on the 21st day of May, 1886, they duly presented said note to "the Metropolitan National bank" and demanded payment of the same, which was refused; that there is now due and unpaid thereon the sum of one hundred dollars, with interest thereon from the 21st day of May, 1886.

Thirty-fourth.

And for a further cause of action plaintiffs allege all the facts hereinbefore alleged in the first cause of action as set forth
25 in this complaint, except the issue of the note or bill there set forth; and further allege—

That on the 5th day of December, 1860, the said "The Metropolitan bank" duly made, executed, and put in circulation as money its certain promissory note or bank bill and dated that day and numbered 2202, whereby it promised to pay to the bearer, on demand, one hundred dollars, and for a valuable consideration, prior to the year 1862, the same became the property of the said James H. Paine. The plaintiffs, as such administrators, on their appointment and qualification became and still are the lawful owners and holders thereof.

That on the 21st day of May, 1886, they duly presented said note to "the Metropolitan National bank" and demanded payment of the same, which was refused; that there is now due and unpaid thereon the sum of one hundred dollars, with interest thereon from the 21st day of May, 1886.

Thirty-fifth.

For a further cause of action plaintiffs allege all the facts hereinbefore alleged in the first cause of action set forth in this complaint, except the issue of the note or bill there set forth; and further allege—

That on the 14th day of March, 1861, "the Metropolitan bank" duly made, executed, and put in circulation as money its certain promissory note — bill, dated that day and numbered 2240, whereby it promised to pay to the bearer, on demand, one hundred dollars, and for a valuable consideration, prior to the year 1862, the same became the property of the said James H. Paine. The plaintiffs, as such administrators, on their appointment and qualification became and still are the lawful owners and holders thereof.

That on the 21st day of May, 1886, they duly presented said note to the said "The Metropolitan National bank" and demanded
26 payment of the same, which was refused; that there is due and unpaid thereon the sum of one hundred dollars, with interest thereon from the 21st day of May, 1886.

Thirty-sixth.

For a further cause of action plaintiffs allege all the facts hereinbefore alleged in the first cause of action set forth in this complaint,

except the issue of the note or bill there set forth; and further allege—

That on the 14th day of March, 1861, the said "The Metropolitan bank" made, executed, and put in circulation as money its certain promissory note or bank bill, dated that day and numbered "2225," whereby it promised to pay to the bearer, on demand, one hundred dollars, and for a valuable consideration, prior to the year 1862, the same became the property of the said James H. Paine. The plaintiffs, as such administrators, on their appointment and qualification became and still are the lawful owners and holders thereof.

That on the 21st day of May, 1886, they duly presented said note to the "The Metropolitan National bank" and demanded payment of the same, which was refused; that there is now due and unpaid thereon the sum of one hundred dollars, with interest from the 21st day of May, 1886.

Thirty-seventh.

For a further cause of action plaintiffs allege all the facts hereinbefore alleged in the first cause of action set forth in this complaint, except the issue of the note or bill there set forth; and further allege—

That on the 14th day of March, 1861, the said "The Metropolitan bank" made, executed, and put in circulation as money its certain promissory note or bank bill, dated that day and numbered
27 "2248," whereby it promised to pay to the bearer, on demand, one hundred dollars, and for a valuable consideration, prior to the year 1862, the same became the property of the said James H. Paine. The plaintiffs, as such administrators, on their appointment and qualification duly became and still are the lawful owners and holders thereof.

That on the 21st day of May, 1886, they duly presented said note to "the Metropolitan National bank" and demanded payment of the same, which was refused; that there is due and unpaid thereon the sum of one hundred dollars, with interest from the 21st day of May, 1886.

Thirty-eighth.

And for a further cause of action plaintiffs allege all the facts hereinbefore alleged in the first cause of action set forth in this complaint, except the issue of the note or bill there set forth; and further allege that on the 14th day of March, 1861, the said "The Metropolitan bank" made, executed, and put in circulation as money its certain promissory note or bank bill, dated that day and numbered "2250," whereby it promised to pay to the bearer, on demand, one hundred dollars, and for a valuable consideration, prior to the year 1862, the same became the property of the said James H. Paine. The plaintiffs, as such administrators, on their appointment and qualification became and still are the lawful owners and holders thereof; that on the 21st day of May, 1886, they duly presented said note to "the Metropolitan National bank" and demanded payment of the same, which was refused; that there is now due and unpaid thereon

the sum of one hundred dollars, with interest thereon from the 21st day of May, 1886.

Thirty-ninth.

28 For a further cause of action plaintiffs allege all the facts hereinbefore alleged in the first cause of action set forth in this complaint, except the issue of the note or bill there set forth; and further alleged—

That on the 14th day of March, 1861, the said "The Metropolitan bank" duly made, executed, and put in circulation as money its certain promissory note or bank bill, dated that day and numbered "2221," whereby it promised to pay to the bearer, on demand, one hundred dollars, and for a valuable consideration, prior to the year 1862, the same became the property of the said James H. Paine. The plaintiffs, as such administrators, on their appointment and qualification duly became and still are the lawful owners and holders thereof; that on the 21st day of May, 1886, they duly presented said note to the "The Metropolitan National bank" and demanded the payment of the same, which was refused; that there is now due and unpaid thereon the sum of one hundred dollars, with interest thereon from the 21st day of May, 1886.

Fortieth.

For a further cause of action plaintiffs allege all the facts hereinbefore alleged in the first cause of action set forth in this complaint, except the issue of the note there set forth; and further allege—

That on the 14th day of March, 1861, the said "The Metropolitan bank" duly made, executed, and put in circulation as money its certain promissory note or bank bill, dated that day and numbered 2245, whereby it promised to pay to the bearer, on demand, one hundred dollars, and for a valuable consideration, prior to the year 1862, the same became the property of the said James H. Paine. The plaintiffs, as such administrators, on their appointment and qualification duly became and still are the lawful owners and

29 holders thereof; that on the 21st day of May, 1886, they duly presented said note to "the Metropolitan National bank" and demanded payment of the same, which was refused; that there is now due and unpaid thereon the sum of one hundred dollars, with interest thereon from the 21st day of May, 1886.

Forty-first.

For a further cause of action plaintiffs allege all the facts hereinbefore alleged in the first cause of action set forth in this complaint, except the issue of the note there set forth; and further allege that on the 28th day of March, 1861, the said "The Metropolitan bank" duly made, executed, and put in circulation as money its certain promissory note, dated that day and numbered 196, whereby it promised to pay to the bearer, on demand, five hundred dollars, and for a valuable consideration, prior to the year 1862, the same became the property of the said James H. Paine. The plaintiffs, as such administrators, on their appoint-

ment and qualification duly became and still are the lawful owners and holders thereof; that on the 21st day of May, 1886, they duly presented said note to "the Metropolitan National bank" and demanded payment of the same, which was refused; that there is now due and unpaid thereon the sum of five hundred dollars, with interest thereon from the 21st day of May, 1886.

Forty-second.

For a further cause of action plaintiffs allege all the facts hereinbefore alleged in the first cause of action set forth in the complaint, except the issue of the note there set forth; and further allege—

That on the 28th day of March, 1861, the said "The Metropolitan bank" duly made, executed, and put in circulation as money its certain promissory note, dated that day and numbered 192, whereby it promised to pay to the bearer, on demand, five hundred dollars, and for a valuable consideration, prior to the year 1862, the same became the property of the said James H. Paine. The plaintiffs, as such administrators, on their appointment and qualification duly became and still are the lawful owners and holders thereof; that on the 21st day of May, 1886, they duly presented said note to "the Metropolitan National bank" and demanded payment of the same, which was refused; that there is due and unpaid thereon the sum of five hundred dollars, with interest thereon from the 21st day of May, 1886.

Forty-third.

For a further cause of action plaintiffs allege all the facts hereinbefore alleged in the first cause of action set forth in this complaint, except the issue of the note there set forth; and further allege—

That on the 28th day of March, 1861, the said "The Metropolitan bank" duly made, executed, and put in circulation as money its certain promissory note or bank bill, dated that day and numbered 191, whereby it promised to pay to the bearer, on demand, five hundred dollars, and for a valuable consideration, prior to the year 1862, the same became the property of the said James H. Paine. The plaintiffs, as such administrators, on their appointment and qualification duly became and now are the lawful owners and holders thereof; that on the 21st day of May, 1886, *he* duly presented said note to "the Metropolitan National bank" and demanded payment of the same, which was refused; that there is due and unpaid thereon the sum of five hundred dollars, with interest thereon from the 21st day of May, 1886.

Forty-fourth.

For a further cause of action plaintiffs alleged all the facts hereinbefore alleged in the first cause of action set forth in this complaint, except the issue of the note there set forth; and further allege that on the 28th day of March, 1861, the said "The Metropolitan bank" duly made, executed, and put in circulation as money its certain promissory note or bank bill, dated that day

and numbered 190, whereby it promised to pay to the bearer, on demand, one thousand dollars, and for valuable consideration, prior to the year 1862, the same became the property of the said James H. Paine. The plaintiffs, as such administrators, on their appointment and qualification duly became and still are the lawful owners and holders thereof; that on the 21st day of May, 1886, they duly presented note to "the Metropolitan National bank" and demanded payment of the same, which was refused; that there is now due and unpaid thereon the sum of one thousand dollars, with interest thereon from the 21st day of May, 1886.

Forty-fifth.

And for a further cause of action plaintiffs allege all the facts hereinbefore alleged in the first cause of action set forth in this complaint, except the issue of the note there set forth; and further allege that on the 28th day of March, 1861, the said "The Metropolitan National bank" duly made, executed, and put in circulation as money its certain promissory note or bank bill, dated that day and numbered 191, whereby it promised to pay to the bearer, on demand, one thousand dollars, and for valuable consideration, prior to the year 1862, the same became the property of the said James H. Paine. The plaintiffs, as such administrators, on their appointment and qualification became and still are the lawful owners and holders thereof; that on the 21st day of May, 1886, they duly presented said note to "the Metropolitan National bank"
32 and demanded payment of the same, which was refused; that there is now due and unpaid thereon the sum of one thousand dollars, with interest thereon from the 21st day of May, 1886.

Forty-sixth.

For a further cause of action plaintiffs allege all the facts hereinbefore alleged in the first cause of action set forth in this complaint, except the issue of the note there set forth; and further allege that on the 28th day of March, 1861, the said "The Metropolitan bank" duly made, executed, and put in circulation as money its certain promissory note or bank bill, dated that day and numbered 193, whereby it promised to pay to the bearer, on demand, one thousand dollars, and for a valuable consideration, prior to the year 1862, the same became the property of the said James H. Paine. The plaintiffs, as such administrators, on their appointment and qualification duly became and still are the lawful owners and holders thereof; that on the 21st day of May, 1886, they duly presented said note to "the Metropolitan National bank" and demanded payment of the same, which was refused; that there is now due and unpaid thereon the sum of one thousand dollars, with interest thereon from the 21st day of May, 1886.

Forty-seventh.

For a further cause of action plaintiffs allege all the facts hereinbefore alleged in the first cause of action set forth in this com-

plaint, except the issue of the note there set forth; and further allege that on the 15th day of April, 1861, the said "The Metropolitan bank" duly made, executed, and put in circulation as money its certain promissory note, dated that day and numbered 2267, whereby it promised to pay to the bearer, on demand, one hundred dollars, and for a valuable consideration, prior to the
33 year 1862, the same became the property of the said James H. Paine. The plaintiffs, as such administrators, on their appointment and qualification duly became and still are the lawful owners and holders thereof; that on the 21st day of May, 1886, they duly presented said note to "the Metropolitan National bank" and demanded payment of the same, which was refused; that there is now due and unpaid thereon the sum of one hundred dollars, with interest thereon from the 21st day of May, 1886.

Forty-eighth.

And for a further cause of action plaintiffs allege all the facts hereinbefore alleged in the first cause of action set forth in this complaint, except the issue of the note there set forth; and further allege that on the 15th day of April, 1861, the said "The Metropolitan bank" duly made, executed, and put in circulation as money its certain promissory note or bank bill, dated that day and numbered 2320, whereby it promised to pay to the bearer, on demand, one hundred dollars, and for a valuable consideration, prior to the year 1862, the same became the property of the said James N. Paine. The plaintiffs, as such administrators, on their appointment and qualification duly became and still are the lawful owners and holders thereof; that on the 21st day of May, 1886, they duly presented said note to "the Metropolitan National bank" and demanded payment of the same, which was refused; that there is now due and unpaid thereon the sum of one hundred dollars, with interest thereon from the 21st day of May, 1886.

Forty-ninth.

For a further cause of action plaintiffs allege all the facts hereinbefore alleged in the first cause of action set forth in this complaint, except the issue of the note there set forth; and further allege
34 that on the 15th day of April, 1861, the said "The Metropolitan bank" duly made, executed, and put in circulation as money its certain promissory note or bank bill, dated that day and numbered 2280, whereby it promised to pay to the bearer, on demand, one hundred dollars, and for a valuable consideration, prior to the year 1862, the same became the property of the said James H. Paine. The plaintiffs, as such administrators, on their appointment and qualification duly became and still are the lawful owners and holders thereof; that on the 21st day of May, 1886, they duly presented said note to "the Metropolitan National bank" and demanded payment of the same, which was refused; that there is now due and unpaid thereon the sum of one hundred dollars, with interest from the 21st day of May, 1886.

Fiftieth.

For a further cause of action plaintiffs allege all the facts hereinbefore alleged in the first cause of action set forth in this complaint, except the issue of the note there set forth; and further allege that on the 15th day of April, 1861, the said "The Metropolitan bank" duly made, executed, and put in circulation as money its certain promissory note or bank bill, dated that day and numbered 2302, whereby it promised to pay to the bearer, on demand, one hundred dollars, and for a valuable consideration, prior to the year 1862, the same became the property of the said James H. Paine. The plaintiffs, as such administrators, on their appointment and qualification duly became and still are the lawful owners and holders thereof; that on the 21st day of May, 1886, they duly presented said note to "the Metropolitan National bank" and demanded payment thereof, which was refused; that there is now due and unpaid thereon the sum of one hundred dollars, with interest from the 21st day of May, 1886.

35 Fifty-first.

For a further cause of action plaintiffs allege all the facts hereinbefore alleged in the first cause of action set forth in this complaint, except the issue of the note there set forth; and further allege that on the 15th day of April, 1886, the said "The Metropolitan bank" duly made and executed and put in circulation as money its certain promissory note or bank bill, dated that day and numbered 2260, whereby it promised to pay to the bearer, on demand, one hundred dollars, and for a valuable consideration, prior to the year 1862, the same became the property of the said James H. Paine. The plaintiffs, as such administrators, duly became and still are the lawful owners and holders thereof; that on the 21st day of May, 1886, they duly presented said note to "the Metropolitan National bank" and demanded payment thereof, which was refused; that there is now due and unpaid thereon the sum of one hundred dollars, with interest thereon from the 21st day of May, 1886.

Fifty-second.

For a further cause of action the plaintiffs allege all the facts hereinbefore alleged in the first cause of action set forth in this complaint, except the issue of the note there set forth; and further allege that on the 15th day of April, 1861, the said "The Metropolitan bank" duly made, executed, and put in circulation as money its certain promissory note or bank bill, dated that day and numbered 2296, whereby it promised to pay to the bearer, on demand, one hundred dollars, and for a valuable consideration, prior to the year 1862, the same became the property of the said James H. Paine. The plaintiffs, as such administrators, duly became and still are the lawful owners and holders thereof; that on the 21st day of May they duly presented said note to "Metropolitan National
36 bank" and demanded payment thereof, which was refused; that there is now due and unpaid the sum of one hundred dollars, with interest thereon from the 21st day of May, 1886.

Fifty-third.

For a further cause of action the plaintiffs allege all the facts hereinbefore alleged in the first cause of action set forth in this complaint, except the issue of the note there set forth; and further allege that on the 15th day of April, 1861, the said "The Metropolitan bank" duly made, executed, and put in circulation as money its certain promissory note or bank bill, dated that day and numbered 2291, whereby it promised to pay to the bearer, on demand, one hundred dollars, and for a valuable consideration thereof, prior to the year 1862, the same became the property of the said James H. Paine. The plaintiffs, as such administrators, on their appointment and qualification duly became and still are the lawful owners and holders thereof; that on the 21st day of May, 1886, they duly presented said note to "the Metropolitan National bank" and demanded payment thereof, which was refused; that there is now due and unpaid thereon the sum of one hundred dollars, with interest thereon from the 21st day of May, 1886.

Fifty-fourth.

For a further cause of action plaintiffs allege all the facts herein alleged in the first cause of action set forth in this complaint, except the issue of the note there set forth; and further allege that on the 15th day of April, 1861, the said "The Metropolitan bank" duly made, executed, and put in circulation as money its certain promissory note or bank bill, dated that day and numbered 2297, whereby it promised to pay to the bearer, on demand, one
37 hundred dollars, and for a very valuable consideration, prior to the year 1862, the same became the property of the said James H. Paine. The plaintiffs, as such administrators, on their appointment and qualification duly became and still are the lawful owners and holder- thereof; that on the 21st day of May, 1886, they duly presented said note to "the Metropolitan National bank" and demanded payment thereof, which was refused; that there is now due and unpaid thereon the sum of one hundred dollars, with interest thereon from the 21st day of May, 1886.

Fifty-fifth.

For a further cause of action the plaintiffs allege all the facts hereinbefore alleged in the first cause of action set forth in the complaint, except the issue of the note there set forth; and further allege that on the 15th day of April, 1861, the said "The Metropolitan bank" duly made, executed, and put in circulation as money its certain promissory note or bank bill, dated that day and numbered 2282, whereby it promised to pay to the bearer, on demand, one hundred dollars, and for a valuable consideration, prior to the year 1862, the same became the property of the said James H. Paine. The plaintiffs, as such administrators, on their appointment and qualification became and still are the lawful owners and holders thereof; that on the 21st day of May, 1886, they duly presented said note to "the Metropolitan National bank" and demanded payment thereof,

which was refused; that there is now due and unpaid thereon the sum of one hundred dollars, with interest thereon from the 21st day of May, 1886.

Fifty-six.

For a further cause of action the plaintiffs allege all the
38 facts hereinbefore alleged in the first cause of action set forth in this complaint, except the issue of the note there set forth; and further allege that on the 13th day of August, 1861, the said "The Metropolitan bank" duly made, executed, and put in circulation as money its certain promissory note or bank bill, dated that day and numbered "2329," whereby it promised to pay to the bearer, on demand, one hundred dollars, and for a valuable consideration, prior to the year 1862, the same being the property of the said James H. Paine. The plaintiffs, as such administrators, on their appointment and qualification duly became and still are the lawful owners and holders thereof; that on the 21st day of May, 1886, they duly presented said note to "the Metropolitan National bank" and demanded payment thereof, which was refused; that there is now due and unpaid thereon the sum of one hundred dollars, with interest thereon from the 21st day of May, 1886.

Fifty-seven.

For a further cause of action the plaintiffs allege all the facts hereinbefore alleged in the first cause of action set forth in this complaint, except the issue of the note there set forth; and further allege that on the 13th day of August, 1861, duly made, executed, and put in circulation as money its certain promissory note or bank bill, dated that day and numbered "2349," whereby it promised to pay to the bearer, on demand, one hundred dollars, and for a valuable consideration, prior to the year 1862, the same became the property of the said James H. Paine. The plaintiffs, as such administrators, on their appointment and qualification duly became and still are the lawful owners and holders thereof; that on the 21st day of May, 1886, they duly presented said note to "the Metropolitan National bank" and demanded payment thereof, which was refused;
39 that there is now due and unpaid thereon the sum of one hundred dollars, with interest thereon from the 21st day of May, 1886.

Fifty-eighth.

For a further cause of action plaintiffs allege all the facts hereinbefore alleged in the first cause of action set forth in this complaint, except the issue of the note set forth; and further allege that on the 13th day of August, 1861, the said "The Metropolitan bank" made, executed, and put in circulation as money its certain promissory note or bank bill, dated that day and numbered "2352," whereby it promised to pay to the bearer, on demand, one hundred dollars, and for a valuable consideration, prior to the year 1862, the same became the property of the said James H. Paine. The plaintiffs, as such administrators, on their appointment and qualification duly

became and still are the lawful owners and holders thereof; that on the 21st day of May, 1886; they duly presented said note to "the Metropolitan National bank" and demanded payment thereof, which was refused; that there is now due and unpaid thereon the sum of one hundred dollars, with interest thereon from the 21st day of May, 1886.

Fifty-ninth.

For a further cause of action plaintiffs allege all the facts hereinbefore alleged in the first cause of action set forth in this complaint, except the issue of the note there set forth; and further allege that on the 13th day of August, 1861, the said "The Metropolitan bank" duly made, executed, and put in circulation as money its certain promissory note or bank bill, dated that day and numbered "2369," whereby it promised to pay to the bearer, on demand, one hundred dollars, and for a valuable consideration, prior to the year
40 1862, the same became the property of the said James H. Paine. The plaintiffs, as such administrators, on their appointment and qualification duly became and still are the lawful owners and holders thereof; that on the 21st day of May, 1886, they duly presented said note to "the Metropolitan National bank" and demanded payment thereof, which was refused; that there is now due and unpaid thereon the sum of one hundred dollars, with interest from the 21st day of May, 1886.

Sixtieth.

For a further cause of action plaintiffs allege all the facts hereinbefore alleged in the first cause of action set forth in this complaint, except the issue of the note there set forth; and further allege that on the 13th day of August, 1861, the said "The Metropolitan National bank" made, executed, and put in circulation as money its certain promissory note or bank bill, dated that day and numbered "2339," whereby it promised to pay to the bearer, on demand, one hundred dollars, and for a valuable consideration, prior to the year 1862, the same became the property of the said James H. Paine. The plaintiffs, as such administrators, on their appointment and qualification duly became and now are the lawful owners and holders thereof; that on the 21st day of May, 1886, they duly presented said note to "the Metropolitan National bank" and demanded payment thereof, which was refused; that there is now due and unpaid thereon the sum of one hundred dollars, with interest thereon from the 21st day of May, 1886.

Sixty-first.

And for a further cause of action plaintiffs allege all the facts hereinbefore alleged in the first cause of action set
41 forth in this complaint, except the issue of the note there set forth; and further allege that on the 13th day of August, 1861, the said "The Metropolitan bank" duly made, executed, and put in circulation as money its certain promissory note or bank bill, dated that day and numbered "2379,"

whereby it promised to pay to the bearer, on demand, one hundred dollars, and for a valuable consideration, prior to the year 1862, the same became the property of the said James H. Paine. The plaintiffs, as such administrators, on their appointment and qualification duly became and still are the lawful owners thereof; that on the 21st day of May, 1886, they duly presented said note to "the Metropolitan National bank" and demanded payment thereof, which was refused; that there is now due and unpaid thereon the sum of one hundred dollars, with interest thereon from the 21st day of May, 1886.

Sixty-second.

For a further cause of action plaintiffs allege all the facts hereinbefore alleged in the first cause of action set forth in the complaint, except the issue of the note there set forth; and further allege that on the 13th day of August, 1861, the said "The Metropolitan bank" duly made, executed, and put in circulation as money its certain promissory note or bank bill, dated that day and numbered 2357, whereby it promised to pay to the bearer, on demand, one hundred dollars, and for a valuable consideration, prior to the year 1862, the same became the property of the said James H. Paine. The plaintiffs, as such administrators, on their appointment and qualification duly became and now are the lawful owners and holders thereof; that on the 21st day of May, 1886, they duly presented said note to "the Metropolitan National bank" and demanded payment thereof, which was refused; that there is now due and unpaid
42 thereon the sum of one hundred dollars, with interest thereon from the 21st day of May, 1886.

Sixty-third.

For a further cause of action plaintiffs allege all the facts hereinbefore alleged in the first cause of action set forth in this complaint, except the issue of the note there set forth; and further allege that on the 13th day of August, 1861, the said "The Metropolitan bank" duly made, executed, and put in circulation as money its certain promissory note or bank bill, dated that day and numbered 2332, whereby it promised to pay to the bearer, on demand, one hundred dollars, and for a valuable consideration, prior to the year 1862, the same became the property of the said James H. Paine. The plaintiffs, as such administrators, on their appointment and qualification duly became and still are the lawful owners and holders thereof; that on the 21st day of May, 1886, they duly presented said note to "the Metropolitan National bank" and demanded payment thereof, which was refused; that there is now due and unpaid thereon the sum of one hundred dollars, with interest thereon from the 21st day of May, 1886.

Sixty-fourth.

For a further cause of action plaintiffs allege all the facts hereinbefore alleged in the first cause of action set forth in this complaint, except the issue of the note there set forth; and further allege that

on the 13th day of August, 1861, the said "The Metropolitan bank" duly made, executed, and put in circulation as money its certain promissory note or bank bill, dated that day and numbered 2321, whereby it promised to pay to the bearer, on demand, one hundred dollars, and for a valuable consideration, prior to the year 1862, the same became the property of the said James H. Paine.

43 The plaintiffs, as such administrators, on their appointment and qualification became and still are the lawful owners and holders thereof; that on the 21st day of May, 1886, they duly presented said note to "the Metropolitan National bank" and demanded payment, which was refused; that there is now due and unpaid thereon the sum of one hundred dollars, with interest thereon from the 21st day of May, 1886.

Sixty-fifth.

For a further cause of action plaintiffs allege all the facts hereinbefore alleged in the first cause of action set forth in this complaint, except the issue of the note there set forth; and further allege that on the 13th day of August, 1861, the said "The Metropolitan National bank" duly made, executed, and put in circulation as money its certain promissory note, dated that day and numbered 2333, whereby it promised to pay to the bearer, on demand, one hundred dollars, and for a valuable consideration, prior to the year 1862, the same became the property of the said James H. Paine. The plaintiffs, as such administrators, on their appointment and qualification duly became and now are the lawful owners and holders thereof; that on the 21st day of May, 1886, they duly presented said note to "the Metropolitan National bank" and demanded payment thereof, which was refused; that there is now due and unpaid thereon the sum of one hundred dollars, with interest from the 21st day of May, 1886.

Sixty-sixth.

For a further cause of action plaintiffs allege all the facts hereinbefore alleged in the first cause of action set forth in this complaint, except the issue of the note there set forth; and further allege

44 that on the 13th day of August, 1861, the said "The Metropolitan bank" duly made, executed, and put in circulation as money its certain promissory note or bank bill, dated that day and numbered 2361, whereby it promised to pay to the bearer, on demand, one hundred dollars, and for a valuable consideration, prior to the year 1862, the same became the property of the said James H. Paine. The plaintiffs, as such administrators, on their appointment and qualification duly became and still are the lawful owners and holders thereof; that on the 21st day of May, 1886, they duly presented said note to "the Metropolitan National bank" and demanded payment thereof, which was refused; that there is now due and unpaid thereon the sum of one hundred dollars, with interest from the 21st day of May, 1886.

Sixty-seventh.

For a further cause of action plaintiffs allege all the facts hereinbefore alleged in the first cause of action set forth in this complaint, except the issue of the note there set forth; and further allege that on the 13th day of August, 1861, the said "The Metropolitan bank" duly made, executed, and put in circulation as money its certain promissory note or bank bill, dated that day and numbered 2357, whereby it promised to pay to the bearer, on demand, one hundred dollars, and for a valuable consideration, prior to the year 1862, the same became the property of the said James H. Paine. The plaintiffs, as such administrators, on their appointment and qualification duly became and still are the lawful owners and holders thereof; that on the 21st day of May, 1886, they duly presented said note to "the Metropolitan National bank" and demanded payment thereof, which was refused; that there is now due and unpaid thereon the sum of one hundred dollars, with interest thereon from the 21st day of May, 1886.

45 Sixty-eighth.

For a further cause of action plaintiffs allege all the facts hereinbefore alleged in the first cause of action set forth in this complaint, except the issue of the note there set forth; and further allege that on the 13th day of August, 1861, the said "The Metropolitan bank" duly made, executed, and put in circulation as money its certain promissory note or bank bill, dated that day and numbered 2354, whereby it promised to pay to the bearer, on demand, one hundred dollars, and for a valuable consideration, prior to the year 1862, the same became the property of the said James H. Paine. The plaintiffs, on their appointment and qualification duly became and they still are the lawful owners and holders thereof; that on the 21st day of May, 1886, they presented said note to "the Metropolitan National bank" and demanded payment thereof, which was refused; that there is now due and unpaid thereon the sum of one hundred dollars, with interest from the 21st day of May, 1886.

Sixty-ninth.

For a further cause of action plaintiffs allege all the facts hereinbefore alleged in the first cause of action set forth in this complaint, except the issue of the note there set forth; and further allege that on 13th day of August, 1861, the said "The Metropolitan bank" duly made, executed, and put in circulation as money its certain promissory note or bank bill, dated that day and numbered 2364, whereby it promised to pay to the bearer, on demand, one hundred dollars, and for a valuable consideration, prior to the year 1862, the same became the property of the said James H. Paine. The plaintiffs, as such administrators, on their appointment and qualification duly became and still are the lawful owners and holders thereof; that on the 21st day of May, 1886, they duly presented said note to "the Metropolitan National bank" and demanded payment thereof, which was refused; that there is now due

and unpaid thereon the sum of one hundred dollars, with interest from the 21st day of May, 1886.

Seventieth.

For a further cause of action plaintiffs allege all the facts hereinbefore alleged in the first cause of action set forth in this complaint, except the issue of the note there set forth; and further allege that on the 13th day of August, 1861, the said "The Metropolitan bank" duly made, executed, and put in circulation as money its certain promissory note or bank bill, dated that day and numbered 2373, whereby it promised to pay to the bearer, on demand, one hundred dollars, and for a valuable consideration, prior to the year 1862, the same became the property of the said James H. Paine. The plaintiffs, as such administrators, on their appointment and qualification duly became and still are the lawful owners and holders thereof; that on the 21st day of May, 1886, they duly presented said note to "the Metropolitan National bank" and demanded payment thereof, which was refused; that there is now due and unpaid thereon the sum of one hundred dollars, with interest thereon from the 21st day of May, 1886.

Seventy-first.

For a further cause of action plaintiffs allege all the facts hereinbefore alleged in the first cause of action set forth in this complaint, except the issue of the note there set forth; and further allege that on the 13th day of August, 1861, the said "The Metropolitan
47 bank" duly made, executed, and put in circulation as money its certain promissory note, dated that day and numbered 2336, whereby it promised to pay to the bearer, on demand, one hundred dollars, and for a valuable consideration, prior to the year 1862, the same became the property of the said James H. Paine. The plaintiffs, as such administrators, on their appointment and qualification duly became and now are the lawful owners and holders thereof; that on the 21st day of May, 1886, they duly presented said note to "the Metropolitan National bank" and demanded payment thereof, which was refused; that there is now due and unpaid thereon the sum of one hundred dollars, with interest thereon from the 21st day of May, 1886.

Seventy-second.

For a further cause of action plaintiffs allege all the facts hereinbefore alleged in the first cause of action set forth in this complaint, except the issue of the note there set forth; and further allege that on the 13th day of August, 1861, the said "The Metropolitan bank" made, executed, and put in circulation as money its certain promissory note or bank bill, dated that day and numbered 2378, whereby it promised to pay to the bearer, on demand, one hundred dollars, and for a valuable consideration, prior to the year 1862, the same became the property of the said James H. Paine. The plaintiffs, as such administrators, on their appointment and qualification duly

became and still are the lawful owners and holders thereof; that on the 21st day of May, 1886, they duly presented said note to "the Metropolitan National bank" and demanded payment thereof, which was refused; that there is now due and unpaid thereon the sum of one hundred dollars, with interest thereon from the 21st day of May, 1886.

48 Seventy-third.

For a further cause of action plaintiffs allege all the facts hereinbefore alleged in the first cause of action set forth in this complaint, except the issue of the note there set forth; and further allege that on the 7th day of October, 1861, the said "The Metropolitan bank" duly made, executed, and put in circulation as money its certain promissory note or bank bill, dated that day and numbered 2412, whereby it promised to pay to the bearer, on demand, one hundred dollars, and for a valuable consideration, prior to the year 1862, the same became the property of the said James H. Paine. The plaintiffs, as such administrators, on their appointment and qualification duly became and still are the lawful owners and holders thereof; that on the 21st day of May, 1886, they duly presented said not to "the Metropolitan National bank" and demanded payment thereof, which was refused; that there is now due and unpaid thereon the sum of one hundred dollars, with interest thereon from the 21st day of May, 1886.

Seventy-fourth.

For a further cause of action plaintiffs allege all the facts hereinbefore alleged in the first cause of action set forth in this complaint, except the issue of the note there set forth; and further allege that on the 7th day of October, 1861, the said "The Metropolitan bank" duly made, executed, and put in circulation as money its certain promissory note or bank bill, dated that day and numbered 2400, whereby it promised to pay to the bearer, on demand, one hundred dollars, and for a valuable consideration, prior to the year 1862, the same became the property of the said James H. Paine. The plaintiffs, as such administrators, on their appointment and qualification duly became and still are the lawful owners and holders
49 thereof; that on the 21st day of May, 1886, they duly presented said note to "the Metropolitan National bank" and demanded payment thereof, which was refused; that there is now due and unpaid thereon the sum of one hundred dollars, with interest thereon from the 21st day of May, 1886.

Seventy-fifth.

For a further cause of action plaintiffs allege all the facts hereinbefore alleged in the first cause of action set forth in this complaint, except the issue of the note there set forth; and further allege that on the 7th day of October, 1861, the said "The Metropolitan bank" duly made, executed, and put in circulation as money its certain promissory note or bank bill, dated that day and numbered 2406,

whereby it promised to pay to the bearer, on demand, one hundred dollars, and for a valuable consideration, prior to the year 1862, the same became the property of the said James H. Paine. The plaintiffs, as such administrators, on their appointment and qualification duly became and still are the lawful owners and holders thereof; that on the 21st day of May, 1886, they duly presented said note to "the Metropolitan National bank" and demanded payment thereof, which was refused; that there is now due and unpaid thereon the sum of one hundred dollars, with interest thereon from the 21st day of May, 1886.

Seventy-sixth.

And for a further cause of action plaintiffs allege all the facts hereinbefore alleged in the first cause of action set forth in this complaint, except the issue of the note there set forth; and further allege that on the 7th day of October, 1861, the said "The Metropolitan bank" duly made, executed, and put in circulation as money its certain promissory note or bank bill, dated that day and numbered 2383, whereby it promised to pay to the bearer, on demand, one hundred dollars, and for a valuable consideration, prior to the year 1862, the same became the property of the said James H. Paine. The plaintiffs, as such administrators, on their appointment and qualification duly became and still are the lawful owners and holders thereof; that on the 21st day of May, 1886, they duly presented said note to "the Metropolitan National bank" and demanded payment thereof, which was refused; that there is now due and unpaid thereon the sum of one hundred dollars, with interest thereon from the 21st day of May, 1886.

Seventy-seventh.

For a further cause of action plaintiffs allege all the facts hereinbefore alleged in the first cause of action set forth in this complaint, except the issue of the note there set forth; and further allege that on the 7th day of October, 1861, the said "The Metropolitan bank" duly made, executed, and put in circulation as money its certain promissory note or bank bill, dated that day and numbered 2417, whereby it promised to pay to the bearer, on demand, one hundred dollars, and for a valuable consideration, prior to the year 1862, the same became the property of the said James H. Paine. The plaintiffs, as such administrators, on their appointment and qualification duly became and now are the lawful owners and holders thereof; that on the 21st day of May, 1886, they duly presented said note to "the Metropolitan National bank" and demanded payment thereof, which was refused; that there is now due and unpaid thereon the sum of one hundred dollars, with interest from the 21st day of May, 1886.

Seventy-eighth.

For a further cause of action plaintiffs allege all the facts hereinbefore alleged in the first cause of action set forth in

the complaint, except the issue of the note there set forth; and further allege that on the 7th day of October, 1861, the said "The Metropolitan bank" duly made, executed, and put in circulation as money its certain promissory note or bank bill dated that day and numbered 2388, whereby it promised to pay to the bearer, on demand, one hundred dollars, and for a valuable consideration, prior to the year 1862, the same became the property of the said James H. Paine. The plaintiffs, as such administrators, on their appointment and qualification duly became and still are the lawful owners and holders thereof; that on the 21st day of May, 1886, they duly presented said note to "the Metropolitan National bank" and demanded payment of the same, which was refused; that there is now due and unpaid the sum of one hundred dollars, with interest thereon from the 21st day of May, 1886.

Seventy-ninth.

For a further cause of action plaintiffs allege all the facts hereinbefore alleged in the first cause of action set forth in this complaint, except the issue of the note there set forth; and further allege that on the 7th day of October, 1861, the said "The Metropolitan bank" duly made, executed, and put in circulation as money its certain promissory note or bank bill, dated that day and numbered 2392, whereby it promised to pay to the bearer, on demand, one hundred dollars, and for a valuable consideration, prior to the year 1862, the same became the property of the said James H. Paine. The plaintiffs, as such administrators, on their appointment and qualification duly became and still are the lawful owners and holders thereof.

That on the 21st day of May, 1886, they duly presented said note to "the Metropolitan National bank" and demanded pay-
52 ment thereof, which was refused; that there is now due and unpaid thereon the sum of one hundred dollars, with interest thereon from 21st of May, 1886.

Eightieth.

For a further cause of action plaintiffs allege all the facts hereinbefore alleged in the first cause of action set forth in this complaint, except the issue of the note there set forth; and further allege that on the 7th day of October, 1861, the said "The Metropolitan bank" duly made, executed, and put in circulation as money its certain promissory note or bank bill dated that day and numbered 2399, whereby it promised to pay to the bearer, on demand, one hundred dollars, and for a valuable consideration, prior to the year 1862, the same became the property of the said James H. Paine. The plaintiffs, as such administrators, on their appointment and qualification duly became and still are the lawful owners and holders thereof; that on the 21st day of May, 1886, they duly presented said note to "the Metropolitan National bank" and demanded payment thereof, which was refused; that there is now due and unpaid thereon the sum of one hundred dollars, with interest thereon from the 21st day of May, 1886.

Eighty-first.

For a further cause of action plaintiffs allege all the facts hereinbefore alleged in the first cause of action set forth in this complaint, except the issue of the note there set forth; and further allege that on the 7th day of October, 1861, the said "The Metropolitan bank" duly made, executed, and put in circulation as money its certain promissory note or bank bill, dated that day and numbered 2389, whereby it promised to pay to the bearer, on demand, one
53 hundred dollars, and for a valuable consideration, prior to the year 1862, the same became the property of the said James H. Paine. The plaintiffs, as such administrators, on their appointment and qualification duly became and still are the lawful owners and holders thereof; that on the 21st day of May, 1886, they duly presented said note to "the Metropolitan National bank" and demanded payment thereof, which was refused; that there is now due and unpaid thereon the sum of one hundred dollars, with interest from the 21st day of May, 1886.

Eighty-second.

For a further cause of action plaintiffs allege all the facts hereinbefore alleged in the first cause of action set forth in this complaint, except the issue of the note there set forth; and further allege that on the 7th day of October, 1861, the said "The Metropolitan bank" duly made, executed, and put in circulation as money its certain promissory note, dated that day and numbered 2402, whereby it promised to pay to the bearer, on demand, one hundred dollars, and for a valuable consideration, prior to the year 1862, the same became the property of the said James H. Paine. The plaintiffs, as such administrators, on their appointment and qualification duly became and still are the lawful owners and holders thereof; that on the 21st day of May, 1886, they duly presented said note to "the Metropolitan National bank" and demanded payment thereof, which was refused; that there is now due and unpaid thereon the sum of one hundred dollars, with interest thereon from the 21st day of May, 1886.

Eighty-third.

For a further cause of action plaintiffs allege all the facts hereinbefore alleged in the first cause of action set forth in this
54 complaint, except the issue of the note there set forth; and further allege that on the 7th day of October, 1861, the said "The Metropolitan bank" duly made, executed, and put in circulation as money its certain promissory note or bank bill, dated that day and numbered 2391, whereby it promised to pay to the bearer, on demand, one hundred dollars, and for a valuable consideration, prior to the year 1862, the same became the property of the said James H. Paine. The plaintiffs, as such administrators, on their appointment and qualification duly became and still are the lawful owners and holders thereof; that on the 21st day of May, 1886, they duly presented said note to "the Metropolitan National bank"

and demanded payment thereof, which was refused; that there is now due and unpaid thereon the sum of one hundred dollars, with interest thereon from the 21st day of May, 1886.

Eighty-fourth.

For a further cause of action plaintiffs allege all the facts hereinbefore alleged in the first cause of action set forth in this complaint, except the issue of the note there set forth; and further allege that on the 7th day of October, 1861, the said "The Metropolitan bank" duly made, executed, and put in circulation as money its certain promissory note or bank bill, dated that day and numbered 2395, whereby it promised to pay to the bearer, on demand, one hundred dollars, and for a valuable consideration, prior to the year 1862, the same became the property of the said James H. Paine. The plaintiffs, as such administrators, on their appointment and qualification duly became and still are the lawful owners and holders thereof; that on the 21st day of May, 1886, they duly presented said note to "the Metropolitan National bank" and demanded payment thereof, which was refused; that there is now due
55 and unpaid thereon the sum of one hundred dollars, with interest thereon from the 21st day of May, 1886.

Wherefore plaintiffs demand judgment against the said defendant upon each and all of said notes for the amount due thereon in the aggregate twelve thousand three hundred dollars, with interest from the 21st day of May, 1886, beside the costs of this action.

Dated May 27th, 1886.

THEO. H. SWIFT,
Plaintiffs' Attorney, 25 Chambers Street, New York.

CITY AND COUNTY OF NEW YORK, *ss:*

Charles F. Chickering, being duly sworn, says that he is one of the plaintiffs above named; that he has heard the foregoing complaint read and knows the contents thereof; that the same is true of his own knowledge except as to the matters which are therein stated to be alleged on information and belief, and as to those matters he believes it to be true.

CHARLES F. CHICKERING.

Sworn to before me this 1st day of June, 1886.

BERNARD S. KELLY,
Notary Public, New York Co.

56 Supreme Court, County of New York.

SUMNER E. CLAGGETT and CHARLES F. CHICKERING, as Administrators of the Goods, Chattels, and Effects of James H. Paine, Deceased,

against

THE METROPOLITAN NATIONAL BANK OF NEW YORK.

The above-named defendant, by Peabody, Baker & Peabody, its

attorneys, for answer to the complaint of the plaintiffs and to each and every one of the causes of action therein set forth—

Denies that it has any knowledge or information sufficient to form a belief that James H. Paine died intestate, as alleged in the complaint.

Denies that it has any knowledge or information sufficient to form a belief that plaintiffs have been appointed by the surrogate of the county of New York or otherwise administrators of the goods, chattels, and credits of said James H. Paine, or that plaintiffs have qualified as such administrators.

Defendant denies that on or about the 14th day of March, 1865, the Metropolitan bank became an association for carrying on business under the laws of the United States under and by the corporate name of the Metropolitan National Bank of New York, but defendant alleges that said Metropolitan bank continued to be a State bank, carrying on its business under the provisions of its original charter according to the laws of the State of New York, until the 28th day of April, 1865, on which day it surrendered its charter, except that it continued to be a body corporate, for the sole
57 purpose of closing its business, for three years after said date, at which time its charter was for all purposes surrendered and cancelled.

Defendant alleges that on the 28th day of April, 1865, it was organized under the laws of the United States and became a corporation carrying on business in the city of New York under the corporate name of the Metropolitan National Bank of New York.

Defendant admits that the defendant received and became vested with all the assets, real and personal, of the Metropolitan bank on the 6th day of May, 1865, but denies that it received or became vested with such assets, or any part of them, before said date.

Defendant denies that it at any time assumed or became liable to pay or discharge all the liabilities of the Metropolitan bank, or that it at any time assumed or became liable to pay or discharge the notes and bank bills described in the complaint or any one of them.

Defendant denies that it has any knowledge or information sufficient to form a belief that the Metropolitan bank at any time made the notes described in the complaint or any one of them, or that said notes described in the complaint or any of them ever were the property of James H. Paine, or that the plaintiffs are the owners or holders of said notes or of any one of them.

Defendant, further answering, denies that there is any sum of money whatever due or owing from the defendant to the plaintiff for or on account of the notes described in the complaint or for or on account of any one of them.

Second. Defendant, further answering and for a second and separate defence to every one of the causes of action set up in the complaint of plaintiffs, on information and belief, alleges—
58 That the Metropolitan bank, prior to the month of March, 1867, to wit, in the month of March, 1865, duly gave notice to the superintendent of banking of the State of New York that it intended to close the business of banking and to become a corpora-

tion under and in accordance with the provisions of the act of Congress entitled "An act to provide a national currency secured by the pledge of United States bonds, and provide for the circulation and redemption thereof, approved June 3d, 1864."

That on or about the 28th day of April, 1865, the directors of the Metropolitan bank signed and executed articles of association, dated on said day, in conformity with the aforesaid act of Congress and the provisions of chapter 97 of the Laws of the State of New York, passed on March 9th, 1865, for the formation of the defendant.

That defendant, by the signing and execution of said articles of association as aforesaid, was, on or about the 28th day of April, 1865, created and organized as a corporation under the act of Congress entitled "An act to provide a national currency secured by the pledge of United States bonds, and to provide for the circulation and redemption thereof, approved June 3d, 1864," and that on May 6th, 1865, defendant became vested with the assets, rights, and property of the said Metropolitan bank.

That thereafter and on or about March 14th, 1867, the said Metropolitan bank and the defendant duly deposited with the superintendent of banking of the State of New York a sum of money equal to the amount of the outstanding circulation of the Metropolitan bank at the time of such deposit, which sum of money was placed by said superintendent in the New York State National bank, in the city of Albany.

That thereafter the superintendent of banking gave notice, which was published in the State paper and in a newspaper printed
59 in the county of New York, in which county said Metropolitan bank was located and carried on its business once a week for six months successively, that the notes of the Metropolitan bank would be redeemed by said superintendent at the said New York State National bank, where said deposit was placed as aforesaid, at par, and that all the outstanding circulating notes of the Metropolitan bank must be presented as aforesaid for redemption within six years from the date of said notice, which date was March 14th, 1867, and that all notes which should not be presented for redemption and payment within the time thus specified would cease to be a charge upon the funds in the hands of the superintendent for that purpose.

That said Metropolitan bank complied with all the provisions of chapter 236 of the Laws of the State of New York for the year 1859 and chapter 97 of the Laws of said State for 1865 in respect to the redemption of its bills.

That the notes described in the complaint were not nor was any one of them presented for payment or redemption, as required by said notice, within the period required by such notice, to wit, within six years from the 14th day of March, 1867, and that all liability of the Metropolitan bank and of this defendant, if there ever was any of this defendant, for the payment of any of the notes described in the complaint ceased on the 14th day of March, 1873.

Third. For a third and separate defence to each and every one of the causes of action set up in the complaint defendant alleges that

said cause of action did not nor did any one of them accrue within six years before the beginning of this action.

Wherefore defendant demands that the complaint be dismissed with costs.

PEABODY, BAKER & PEABODY,
Defendant's Attorneys, 2 Wall Street, New York City.

60 CITY AND COUNTY OF NEW YORK, *ss:*

Henry A. Hurlbut, being duly sworn, deposes and says that he is an officer, to wit, the president, of the above-named defendant; that the foregoing answer is true of his own knowledge except as to the matters therein stated to be alleged on information and belief, and as to those matters he believes it to be true.

That the reason why this verification is not made by the defendant is because it is a corporation; that the grounds of deponent's belief as to all the matters not stated upon his own knowledge are derived from statements and representations made to him by agents of the defendant.

HENRY A. HURLBUT.

Sworn to before me this 7th day of July, 1886.
THOS. S. WILLIAMS,
Notary Public, N. Y. Co.

Supreme Court, County of New York.

SUMNER E. CLAGGETT *et als.*, as Adm'rs.
vs.
METROPOLITAN NATIONAL BANK OF NEW YORK.

It is hereby ordered, on motion of Peabody, Baker & Peabody, attorneys for the defendant, that the issues presented by the pleadings in the above-entitled action be tried.

Dated July 8th, 1886.

(S'd) GEO. C. BARRETT, *J. S. C.*

61 Supreme Court, New York County.

SUMNER E. CLAGGETT and CHARLES F. CHICKERING, as Administrators of the Goods, Chattels, and Effects of James H. Paine, Deceased, Plaintiffs,
against
THE METROPOLITAN NATIONAL BANK, Defendant.

This action being at issue upon the pleadings and having come on for trial before the court without a jury, at a special term of the supreme court, held at the court-house, in the city of New York, a jury trial having been expressly waived, I, Edward Patterson, justice of said court, do hereby make and file the following decision:

Findings of Fact.

1. At the time of the issue of the bank bills or promissory notes hereinafter set forth the Metropolitan bank was a moneyed corpora-

tion and banking association, duly organized and incorporated on the 10th day of April, 1851, under and pursuant to the act of the Legislature of the State of New York, entitled "An act to authorize the business of banking," passed April 18, 1838 (being chapter 260 of the Laws of 1838), and the several acts supplementary thereto and amendatory thereof, and as such was carrying on the business of banking in the city and county of New York under the corporate name of the Metropolitan bank.

62 2. That as such moneyed corporation it had authority under the laws of this State to issue its bank bills or promissory notes, payable on demand, and to put the same in circulation as money; and it had deposited with the proper officer of this State the requisite security therefor.

3. That as such moneyed corporation, and on the respective dates set opposite the respective bills, it duly made, executed, and put in circulation as money the following bank bills, respectively, whereby, for a valuable consideration, it promised to pay the bearer, on demand, the respective sums set opposite each bill, respectively, to wit:

Bills.	Amount.	Number.	Date of issue.
1	$100	1843	Nov. 20, 1858.
1	100	1923	June 28, 1859.
1	100	1905	Do.
1	100	1994	Do.
1	100	1950	Do.
1	100	1935	Do.
1	100	1866	Do.
1	100	2007	March 6, 1860.
1	100	1995	Do.
1	100	2074	Do.
1	100	1971	Do.
1	100	2044	May 19, 1860.
1	100	2037	Do.
1	100	2032	Do.
1	100	2047	Do.
1	100	2050	Do.
1	100	2045	Do.
1	100	2070	September 4, 1860.
1	100	2071	Do.
1	100	2112	Do.
1	100	2009	Do.
1	100	2096	Do.
1	100	2100	Do.
63			
1	100	2176	December 5, 1860.
1	100	2164	Do.
1	100	2217	Do.
1	100	2170	Do.
1	100	2180	Do.

Bills.	Amount.	Number.	Date of issue.
1	100	2186	December 5, 1860.
1	100	2183	Do.
1	100	2141	Do.
1	100	2182	Do.
1	100	2137	Do.
1	100	2202	Do.
1	100	2240	March 14, 1861.
1	100	2225	Do.
1	100	2248	Do.
1	100	2250	Do.
1	100	2221	Do.
1	100	2245	Do.
1	500	196	March 28, 1861.
1	500	192	Do.
1	500	191	Do.
1	1,000	190	Do.
1	1,000	191	Do.
1	1,000	193	Do.
1	100	2267	April 15, 1861.
1	100	2320	Do.
1	100	2280	Do.
1	100	2302	Do.
1	100	2260	Do.
1	100	2296	Do.
1	100	2291	Do.
1	100	2297	Do.
1	100	2282	Do.
1	100	2329	August 13, 1861.
1	100	2349	Do.
1	100	2352	Do.
1	100	2369	Do.
1	100	2339	Do.
1	100	2379	Do.
1	100	2357	Do.
64			
1	100	2332	August 13, 1861.
1	100	2321	Do.
1	100	2333	Do.
1	100	2361	Do.
1	100	2357	Do.
1	100	2354	Do.
1	100	2364	Do.
1	100	2373	Do.
1	100	2336	Do.
1	100	2378	Do.
1	100	2412	October 7, 1861.
1	100	2400	Do.
1	100	2406	Do.
1	100	2383	Do.

Bills.	Amount.	Number.	Date of issue.
1	100	2417	October 7, 1861.
1	100	2388	Do.
1	100	2392	Do.
1	100	2399	Do.
1	100	2389	Do.
1	100	2402	Do.
1	100	2391	Do.
1	100	2395	Do.
84	$12,300		

4. In the month of October, 1861, each of said bills, for a valuable consideration, was delivered by the Metropolitan bank to James H. Paine, and thereupon became his property, and he remained and was the owner and holder thereof from that time until his death.

5. Said James H. Paine died at the city of New York on the 23d day of December, 1885, intestate, and said plaintiffs were, on the 25th day of February, 1886, duly appointed by the surrogate of said county administrators of the goods, chattels, and effects which were of said deceased, and they have duly qualified as such and in said trust still continue.

65 6. That plaintiffs, as such administrators, thereupon became and now are the owners and holders of said bills or notes; that payment thereof was demanded May 21, 1886, but was refused and no part thereof has been paid.

7. Between the 9th and 14th days of March, 1865, and pursuant to the act of the legislature of the State of New York entitled "An act enabling the banks of this State to become associations for the purpose of banking under the laws of the United States," passed March 9, 1865 (being chapter 97 of the Laws of 1865), the owners of more than two-thirds of the capital stock of said The Metropolitan bank in writing duly authorized the directors of said bank to make the necessary organization certificate and to change and convert said bank into a national association under the provisions of the act of Congress entitled "An act to provide a national currency secured by pledge of United States bonds and to provide for the circulation and redemption thereof," approved June 3, 1864.

8. Pursuant to such written authorization of the stockholders, the directors of said bank, at a meeting duly held on the 14th day of March, 1865, at which a majority of the directors were present, unanimously adopted the following preamble and resolution:

Whereas the owners of more than two-thirds of the capital stock of this bank have in writing authorized the directors of this bank to make the necessary organization certificate and to change and convert this bank into a national association under the provisions of the act of Congress entitled "An act to provide a national currency secured by pledge of United States bonds and to provide for the circulation and redemption thereof," approved June 3, 1864, and the act amending the same:

66 Resolved, in pursuance of the authority given by the said

act of Congress and of an act of the legislature of this State entitled "An act enabling banks of this State to become associations for the purpose of banking under the laws of the United States," passed March 9th, 1865, That this bank become a national association under the provisions of the said act of Congress by the name of the Metropolitan National bank; and the directors of this bank hereby decide and determine that this bank shall become a national banking association under the laws of the United States by such name and title.

Resolved, That notice of the decision of the bank to become a national banking association as aforesaid be given for thirty days in the Evening Post, a public newspaper published in the city of New York, and that the cashier send a like printed notice and also a blank power of attorney, with request to sign, by mail to each stockholder who has not consented in writing to the conversion of this bank into a national association as aforesaid, and that the cashier also notify the superintendent of the banking department of this State that this bank has decided to become a banking association under the laws of the United States.

Resolved, That the transfer books be closed from and after the 12th day of April next until such time as this bank may be authorized to commence business as a national association.

9. Pursuant to such resolution, the cashier of said bank, on the 14th day of March, 1865, duly notified the superintendent of the banking department of this State that said bank had decided to become a banking association under the laws of the United States. Such notice was filed in the office of the superintendent March 17, 1865, and is as follows:

67 METROPOLITAN BANK, No. 108 BROADWAY,
NEW YORK, *March 14th*, 1865.

Hon. H. H. Van Dyck, sup't banking dep't, Albany, N. Y.:

The owners of more than two-thirds of the capital stock of the Metropolitan bank having in writing authorized the directors of said bank to make the necessary organization certificate and to change and convert the said bank into a national association under the act of Congress entitled "An act to provide a national currency secured by pledge of United States bonds and to provide for the circulation and redemption thereof," approved June 3d, 1864, notice is hereby given that at a meeting of the board of directors of said bank held this day it was, by a vote of the majority of the directors, decided to make such change in pursuance of such authority and of the said act of Congress, and also of the provisions of an act of the legislature of the State of New York entitled "An act enabling banks of this State to become associations for the purpose of banking under the laws of the United States," passed March 9th, 1865, and that said bank has has so decided and determined to become a national banking association under the laws of the United States by the name of the Metropolitan National bank.

Respectfully yours, GEO. I. SENEY, *Cashier.*

10. Such notice was also duly published by the cashier of said bank in the Evening Post, a newspaper published in New York city (being the newspaper selected by the directors), for the space of thirty days.

68 11. Such notice (printed) was also sent by mail by the cashier of said bank to all non-voting or dissenting stockholders.

12. The directors of said bank immediately proceeded, pursuant to said chapter 97 of the Laws of 1865, to execute and transmit to the United States Comptroller of the Currency the necessary organization certificate and articles of association to perfect the organization of the defendant herein (The Metropolitan National Bank) under the said act of Congress. Said new articles of association were dated April 28, 1865, and were duly filed at Washington May 3, 1865. The Comptroller of the Currency issued his certificate authorizing the defendant herein to commence the business of banking under the laws of the United States May 6, 1865.

13. The Metropolitan bank and its directors complied with all the requirements of said chapter 97 of the Laws of 1865. The directors of said bank continued to be the directors of the defendant herein. The banking business of the defendant, under the United States laws, was continued at the same place, in the city of New York, where the Metropolitan bank did business, and such banking business of the defendant has ever since continued to the 18th of November, 1884, since which date the directors of said bank have been winding it up. Said defendant became vested with all the assets, real and personal, of the Metropolitan bank, pursuant to said chapter 97 of the Laws of 1865.

14. At a meeting of the board of directors of the Metropolitan bank on the 21st day of March, 1865, the following resolution was unanimously adopted:

That in accordance with the written assent of a majority in the interest of the shareholders of this bank it is expedient to close its business, and that we will proceed to do such acts as are required to carry out this purpose.

69 That John E. Williams, president, and George I. Seney, cashier, or either of them are hereby authorized to return its notes, withdraw from the bank department its securities there deposited, and to transact all business with that department on behalf of this bank which may be necessary to close finally the affairs of said bank with that department, and that a certified copy of these resolutions be transmitted to the superintendent.

15. Notice of such resolutions and a certified copy thereof was the same day transmitted by the bank to the superintendent of the banking department of this State and was filed in his office March 21, 1865.

16. The largest amount of circulating notes issued by the Metropolitan bank which were outstanding at any one time, as shown by the books of the bank department, was $577,000, and the date when said amount was outstanding was February 10, 1864. On March 21 and March 24, 1865, the amount of circulating notes issued by said

bank which were outstanding, as shown by the books of the bank department, was $100,000. The amount of circulating notes issued by said bank which were outstanding on March 14, 1867, was $25,200, it having redeemed all its circulating notes except that amount.

17. On the 14th day of March, 1867, said The Metropolitan bank and the defendant herein deposited with the bank superintendent of this State a sum of money equal to the outstanding circulation of said Metropolitan bank at the time of such deposit, which sum of money was placed by the superintendent in the New York State National bank, at Albany, being a bank in good credit. The superintendent gave up the other securities theretofore deposited
70 with him for the redemption of the circulating notes of the Metropolitan bank.

18. Said superintendent, upon the receipt of such deposit, gave a notice, of which the following is a copy:

STATE OF NEW YORK, BANK DEPARTMENT,
ALBANY, *March* 14, 1867.

Notice is hereby given, pursuant to chapter 236, Laws of 1859, and 476, Laws of 1865, that the circulating notes issued to the Metropolitan bank, a banking association located in the city of New York, will be redeemed at par by the superintendent of the banking department on presentation at the New York State National bank, in the city of Albany, for six years from the date hereof and not thereafter. The outstanding circulating notes of the said bank must be presented as aforesaid within six years from the date hereof, and all notes which shall not be presented for redemption and payment within the time thus specified will cease to be a charge upon the fund in the hands of the superintendent for that purpose.

G. W. SCHUYLER,
Superintendent.

Such notice was published by said superintendent in the State paper (the Albany Evening Journal) once a week for six months successively, commencing March 19, 1867, and also in a newspaper published in the county of New York, in which county said bank was located, to wit, the New York Tribune, once a week for six months successively, commencing March 16, 1867.

19. None of the bills above set out were presented for payment or redemption at said New York State National bank or elsewhere within seven years from March 14, 1867.

71 20. At the expiration of such notice the superintendent surrendered to defendant the money remaining in his hands after such redemption, except the amount necessary to pay the reasonable expenses chargeable against the same, including payment for publication of said notices.

21. The original articles of association of the Metropolitan bank, filed April 10, 1851, provided that said bank should terminate January 1, 1950.

22. The following-named laws of the State of New York were respectively passed and enacted at the dates set opposite each:

Chapter 236, Laws of 1859, April 11, 1859.
Chapter 476, Laws of 1865, April 17, 1865.
Chapter 348, Laws of 1866, April 3, 1866.
Chapter 97, Laws of 1865, March 9, 1865.

Conclusions of Law.

I.

The proceedings set forth in the foregoing findings of fact numbered from 14 to 20, inclusive, did not affect a termination of the liability of the Metropolitan bank on the bank bills hereinbefore set out.

II.

Said proceedings set forth in the foregoing findings of fact numbered from 14 to 20, inclusive, did not affect the liability of the defendant in this action to pay said bank bills.

III.

72 The proceedings for the deposit with the bank superintendent and the redemption of bills by him under the acts—chapter 476, Laws of 1865, and chapter 348, Laws of 1866—could not affect the obligation of the contracts made in October, 1861, with plaintiffs' intestate.

IV.

Plaintiffs are entitled to recover of defendant the sum of $12,300, with interest thereon from May 21, 1886, besides costs, including an extra allowance of three hundred dollars.

Judgment is directed accordingly.

Dated New York, December 8th, 1888.

(Signed) EWD. PATTERSON, *J. S. C.*

Supreme Court, New York County.

SUMNER E. CLAGGETT and CHARLES F. CHICKERING, as Administrators of the Goods, Chattels, and Effects of James H. Paine, Deceased, Plaintiffs,

vs.

THE METROPOLITAN NATIONAL BANK, Defendant.

This action having been tried before Hon. Edward Patterson, one of the justices of this court, without a jury, a jury trial having been waived, and said justice having duly made and filed his find-
73 ings and decision, whereby, among other things, judgment is directed in favor of the plaintiffs and against the defendant for the sum of $12,300, with interest thereon from May 21, 1886, with costs, and plaintiffs' costs having been duly taxed:

Now, on motion of Theodore H. Swift, attorney for the plaintiffs—

It is ordered and adjudged that said plaintiffs, Sumner E. Claggett and Charles F. Chickering, as administrators of the goods, chattels,

and effects of James H. Paine, deceased, recover of said defendant, The Metropolitan National Bank, the sum of fourteen thousand two hundred and six dollars and fifty cents, damages, and the sum of four hundred and twenty-one dollars and thirty-three cents, costs, in all amounting to the sum of fourteen thousand six hundred and twenty-seven dollars and eighty-three cents ($14,627.83), and have execution therefor.

[L. S.] (Signed) JAMES A. FLACK, *Clerk.*

Supreme Court.

SUMNER E. CLAGGETT and CHARLES F. CHICKERING, as Administrators, &c.,
against
THE METROPOLITAN NATIONAL BANK.

The defendant above named excepts separately to every one of the following conclusions of law contained in the decision of Hon. Edward Patterson, justice, dated December 8th, 1888, and
74 filed herein on December 22d, 1888, the said exceptions to form part of the case on appeal:

First. To the whole of the first conclusion of law, marked I, and to every part thereof.

Second. To the whole of the second conclusion of law, marked II, and to every part thereof.

Third. To the whole of the third conclusion of law, marked III, and to every part thereof.

Fourth. To the whole of the fourth conclusion of law, marked IV, and to every part thereof, and to the direction of the court for judgment against defendant.

PEABODY, BAKER & PEABODY,
Attorneys for Defendant.

To James A. Flack, Esq., clerk of the supreme court of county of New York; Theo. H. Swift, Esq., attorney for the plaintiffs.

Supreme Court, County of New York.

SUMNER E. CLAGGETT and CHARLES F. CHICKERING, Administrators, &c.,
ag'st
THE METROPOLITAN NATIONAL BANK.

Please take notice that the above-named Metropolitan
75 National Bank, defendant, hereby appeals to the general term of this court from the judgment and each and every part thereof heretofore and on the 22d day of December, 1888, entered in this action, in the office of the clerk of the supreme court, in the county of New York, in favor of the above-named plaintiffs and against the above-named defendant for the sum of fourteen thousand six hundred and twenty-seven dollars and eighty-three cents.

Dated New York, December 24th, 1888.

PEABODY, BAKER & PEABODY,
Attorneys for Defendant, 2 Wall Street, New York.

To Jas. A. Flack, clerk of supreme court; Theo. A. Swift, Esq., attorney for plaintiff.

The foregoing findings of fact contain all the evidence that was offered by both parties on the trial.

CLAGGETT and Another, Administrators, *vs.* THE METROPOLITAN NATIONAL BANK, &c. } Special Term, Part I. October, 1888.

PATTERSON, *J.*:

In this action is involved the applicability to the facts disclosed in the agreed statement of the provisions of ch. 236 of the Laws of 1859 as amended by ch. 348 of the Laws of 1866 and the provisions of ch. 97 of the Laws of 1865, the latter being entitled
76 "An act enabling the banks of this State to become associations for the purpose of banking under the laws of the United States."

The defendant claims exemption from liability for the bank notes found among the effects of the plaintiffs' intestate on the ground that all liability therefor ceased long before this action was brought because of the deposit of money with the State superintendent of banking, the publication of notice requiring redemption of the notes to be made within six years, and the failure to present such notes for redemption pursuant to the notice. The act of 1859 was passed to facilitate the winding up of the affairs and business of State banks intending to close business or whose charters have expired or which had become insolvent, and it was not intended to affect banks whose business was to go on continuously. If the Metropolitan bank did close business by becoming a national banking association the contention here made would be unanswerable, but, merely changing from the State to the Federal system of banking, it did not close its business. It was held by the court of appeals in City National Bank of Poughkeepsie *vs.* Phelps, 97 N. Y., 44, that "the general scheme of the national banking act is that State banks may avail themselves of its privileges and subject themselves to its liabilities without abandoning their corporate existence, without any change in the organization, officers, stockholders, or property, and without any interruption of their pending business or contracts. All property and rights which they held before organizing as national banks vested in them under the new status," and "although in form their property and rights as State banks purport to be transferred to them in their new status of national banks, yet in substance there is no actual transfer from one body to the other, but a continuation of the same body under a changed jurisdiction. As between it and those who have contracted with it it retains its identity, notwithstand-
77 ing its acceptance of the privilege of organizing under the national banking act."

When that case was decided in this court Gilbert, J. (whose view is endorsed by the court of appeals), said (16 Hun., 158): "The change from a State to a national bank did not destroy either the existence or the identity of the corporation." "Such change conferred new franchises and imposed new duties and liabilities on the corporate body in addition to those which it previously had, but

nothing more." "There was a slight change in the corporate name, but the new name designated the same entity. In short, the legal effect of the change was merely the acceptance of a new charter by the corporation. It remained to every intent and purpose as it did before, though its name was altered and its new charter was granted by the national instead of the State legislature."

The necessary result of this view of the law is that the change or conversion of the Metropolitan bank to the Metropolitan National bank did not result in a close of its business. It remained the same bank, and went on doing business continuously, and the mere passing of a resolution that it intended to close business could not have the effect now claimed, as the intention manifestly was simply to prosecute its then "pending business," and to conduct business thereafter under the changed jurisdiction. If this is correct the proceedings under the act of 1859 were ineffectual, unless they were authorized under the provisions of ch. 97 of the Laws of 1865.

By sec. 2 of that statute it is enacted that any State bank becoming a national banking association "shall be deemed to have surrendered its charter if it shall have complied with the requirements of this act, provided that every such bank shall, nevertheless, be continued a body corporate for the term of three years after the time of such surrender for the purpose of prosecuting and
78 defending suits by and against it, and to enable it to close its concerns and to dispose of and convey its property, but not for the purpose of continuing under the laws of this State the business for which it was established."

It is claimed that, under the section referred to, the Metropolitan bank was authorized to close its business, and was brought within the permission of the act of 1859 as to terminating liability on its circulating notes as a bank closing business, and one whose charter had expired. The surrender of the charter may be deemed an expiration, but an examination of the other provisions of the act of 1865 will show that it was not the intention of the legislature to confer authority on the State institution to extinguish the liability of the National Banking Association, into which it was converted, for its circulating notes. By sec. 8 it was provided that "nothing in this act contained shall be construed as releasing such association from its obligation to pay and discharge all the liabilities created by law or incurred by the bank before becoming such association." Beyond that the general purpose of maintaining the liability of the National Banking Association for the circulating notes of the State bank is indicated in the 6th section, which provides that as soon as the certificate of the Comptroller of the Currency has been obtained authorising the bank to commence business, &c., "all the assets, real and personal, shall immediately, and by act of law, and without any conveyance or transfer, be vested in and become the property of the National Banking Association, into which such bank shall have been converted." It is not suggested that the correlative duty of paying the liabilities was not assumed by taking over the assets. As clearly indicating the purpose of the legislature, the same sec. 6 enacts: "and it (the national bank) shall

be entitled, on returning the bills of such (the State) bank to the banking department of this State, to receive the stocks pledged to
79 secure the redemption of the same in like manner as the bank issuing the same is now entitled by law, and shall be subjected to the same rules as such banks in respect to the final redemption of the circulating notes of such State banks so converted into national associations."

One purpose of this act seems clearly to have been to carry with the transfer of the assets the obligation to pay all liabilities of the State bank, including the circulating notes, and to put at the disposal of the national bank the securities lodged with the banking department to protect the circulation and to continue down to final redemption the duty of the national bank to pay that circulation. Such a purpose is inconsistent with the theory of the legislature having conferred on the State organization the right to destroy the liability of the national bank, and renders the act of 1859 inapplicable; and while the State may not legislate concerning national banks so as to fix upon them liabilities or duties which Congress has not seen fit to impose, it had power to declare how and under what circumstances and conditions the national banks might acquire funds or securities specially pledged with the State for special contracts under the State banking law so long as the legislation did nothing further.

I am of the opinion that the bank bills are a debt of the defendant, and that the plaintiffs are entitled to recover, bank bills not being within the statute of limitations by the law of this State.

80 At a general term of the supreme court of the State of New York, held in and for the first department, at the courthouse, New York city, on the 16th day of May, 1890.

Present: Hon. Charles H. Van Brunt, presiding justice; Hon. John R. Brady, Hon. Willard Bartlett, associate justices.

SUMNER E. CLAGGETT and CHARLES F. CHICKERING, as Administrators of the Goods, Chattels, and Effects of James H. Paine, Deceased, Respondents,

vs.

THE METROPOLITAN NATIONAL BANK, Appellant.

An appeal having been taken by the defendant from the judgment entered herein for the sum of $14,627.83 on the 22d day of December, 1888, and said appeal having come on in its order, and after hearing Mr. Baker for the appellant and Mr. Russell for the respondents, due deliberation being had, on motion of Mr. Russell—

It is ordered that said judgment appealed from be, and the same hereby is, in all things affirmed with costs against the appellant, to be taxed.

A copy.

[L. S.] (Signed) EDWARD F. REILLY, *Clerk.*

81 Supreme Court, New York County.

SUMNER E. CLAGGETT and CHARLES F. CHICKERING, as Administrators of the Goods, Chattels, and Effects of James H. Paine, Deceased, Plaintiffs,

vs.

THE METROPOLITAN NATIONAL BANK, Defendant.

The appeal from a judgment entered on the 22d day of December, 1888, in favor of the plaintiffs and against the defendant for the sum of fourteen thousand six hundred and twenty-seven dollars and eighty-three cents ($14,627.83) coming on to be heard at a general term of this court, and, after hearing argument, said court having affirmed said judgment, with costs, and the costs of the plaintiffs, respondents, having been taxed at $75.71: Now, on motion of Theodore H. Swift, attorney for plaintiffs—

It is ordered and adjudged that the said judgment so appealed from be, and the same is hereby, affirmed, and that the above-named plaintiffs recover of the above-named defendant, The Metropolitan National Bank, the sum of seventy-five dollars and seventy-one cents ($75.71) as and for their costs, and have execution therefor.

Judgment, May 22, 1890.

(Signed) EDWARD F. REILLY, *Clerk.*

82 Supreme Court, County of New York.

SUMNER E. CLAGGETT and CHARLES E. CHICKERING, as Administrators of the Goods, Chattels, and Effects of James H. Paine, Deceased, Plaintiffs and Respondents,

against

THE METROPOLITAN NATIONAL BANK, Defendant and Appellant.

Please take notice that the defendant hereby appeals to the court of appeals from the judgment of the general term of this court entered in this action in the clerk's office of this court on May 22, 1890, whereby the judgment entered herein on the 22d day of December, 1888, in favor of the plaintiffs and against the defendant, for fourteen thousand six hundred and twenty-seven $\frac{83}{100}$ dollars, was affirmed with costs, and whereby it was ordered and adjudged that the plaintiffs recover of the defendant the sum of seventy-five dollars and seventy-one cents, cost, on appeal to general term, and from the whole and every part of said judgment.

New York, May 22, 1890.

PEABODY, BAKER & PEABODY,
Plaintiffs' *Attorneys*, 2 *Wall Street, New York.*

To Theodore H. Swift, Esq., plaintiffs' attorney; Edward F. Reilly, Esq., clerk of the supreme court in and for county of New York.

83 Court of Appeals.

STATE OF NEW YORK, *ss.*:

Pleas in the court of appeals held at the capitol, in the city of Albany, on the 3rd day of February, in the year of our Lord one thousand eight hundred and ninety-one, before the judges of said court.

Witness the Hon. William C. Ruger, chief judge, presiding; Gorham Parks, clerk.

Remittitur, February 3rd, 1891.

SUMNER E. CLAGGETT and CHARLES E. CHICKERING, as Administrators of the Goods, Chattels, and Effects of James H. Paine, Deceased, Resp'd'ts,

against

THE METROPOLITAN NATIONAL BANK, App'l'nt.

Be it remembered that on the 18th day of June, in the year of our Lord one thousand eight hundred and *and* ninety, The Metropolitan National Bank, the appellant in this action, came here into the court of appeals, by Peabody, Baker & Peabody, its attorneys, and filed in the said court a notice of appeal and return thereto from the judgment of the general term of the supreme court of the State of New York, and Sumner E. Claggett and another, as
84 administrators, &c., the respondents in said action, afterwards appeared in said court of appeals, by Theodore H. Swift, their attorney; which said notice of appeal and the return thereto, filed as aforesaid, are hereunto annexed.

Whereupon the said court of appeals, having heard this cause argued by Mr. Fisher A. Baker, of counsel for the appellant, and by Mr. Leslie W. Russell, of counsel for the respondent, and after due deliberation had thereon, did order and adjudge that the judgment of the said supreme court appealed from in this action be in all things affirmed; and it was further ordered and adjudged that the respondents' recover against the appellant costs of appeal to this court.

And it was also further ordered that the record aforesaid and the proceedings in this court be remitted to the said supreme court, there to be proceeded upon according to law.

Therefore it is considered that the said judgment be in all things affirmed, with costs as aforesaid, and stand in full force, strength, and effect.

And thereupon, as well *as* the notice of appeal and return thereto aforesaid as the judgment of the court of appeals aforesaid, by them given in the premises, are, by the said court of appeals, remitted into the said supreme court of the State of New York, before the justices thereof, according to the form of the statute in such case made and provided, to be enforced according to law, and which rec-

ord now remains in the said supreme court, before the justices thereof, &c.

GORHAM PARKS,
Clerk of the Court of Appeals of the State of New York.

85 COURT OF APPEALS, CLERK'S OFFICE,
ALBANY, *Feb'y 3rd*, 1891.

I hereby certify that the preceding record contains a correct transcript of the proceedings in said action in the cou*ty* of appeals, with the papers originally filed therein attached thereto. [SEAL.]

GORHAM PARKS, *Clerk.*

86 At a special term of the supreme court of the State of New York, held in and for the county of New York, at chambers, in the county court-house, on the 20th day of February, 1891.

Present: Honorable George L. Ingraham, justice.

SUMNER E. CLAGGETT and CHARLES F. CHICKERING, as Administrator- of the Goods, Chattels, and Effects of James H. Paine, Deceased, Plaintiffs,

against

THE METROPOLITAN NATIONAL BANK, Defendant.

The defendant having heretofore appealed to the court of appeals from the judgment of the general term of this court, entered May 22, 1890, affirming the prior judgment entered December 22, 1888, in favor of the plaintiffs for $14,627.83, and said appeal having been heard and decided by the court of appeals, as appears by its remittitur, whereby said judgment appealed from is affirmed with costs to the plaintiffs against the defendant—

On reading and filing said remittitur, and on motion of Theo. H. Swift, attorney for plaintiffs—

It is ordered that the decision of the court of appeals be, and the same hereby is, made the decision of this court.

Enter.

G. L. I., *J.*

87 Supreme Court, New York County.

SUMNER E. CLAGGETT and CHARLES F. CHICKERING, as Administrators of the Goods, Chattels, and Effects of James H. Paine, Deceased, Plaintiffs,

against

THE METROPOLITAN NATIONAL BANK, Defendant.

Judgment, February 24th, 1891.

The defendant having appealed to the court of appeals of this State from the judgment of the general term of this court, entered May 22, 1890, affirming the judgment entered herein December 22, 1888, in favor of the plaintiffs and against the defendant, for $14,627.83, and said appeal having been heard and decided by the

court of appeals, and its remittitur being filed herewith, whereby said judgments appealed from are in all things affirmed with costs, and the decision of the court of appeals having been made the decision of this court by order dated February 20, 1891, and the plaintiffs' costs having been duly taxed: Now, on motion of Theo. H. Swift, attorney for the plaintiffs—

It is ordered and adjudged that said judgment appealed from be, and the same hereby is, in all things affirmed, and that the above-named plaintiffs recover of the above-named defendant the sum of one hundred and ten dollars and sixty cents ($110.60), their costs on said appeal, and have execution therefor.

(Signed) LEONARD A. GIEGERICH, *Clerk.*

88 Supreme Court, County of New York.

SUMNER E. CLAGGETT and CHARLES F. CHICKERING, as Administrators of Goods, Chattels, and Credits of James H. Paine,
against
METROPOLITAN NATIONAL BANK.

Know all men by these presents—

That we, Henry A. Hurlbut, residing at 11 W. 20th street, New York city, and William H. Lee, residing at 516 5th avenue, New York city, are held and firmly bound unto the above-named Sumner E. Claggett and Charles F. Chickering, as administrators of the goods, chattels, and credits of James H. Paine, in the sum of twenty-nine thousand seven hundred and eight dollars, to be paid to the said Sumner E. Claggett and Charles F. Chickering, as administrators; for the payment of which, well and truly to be made, we bind ourselves and each of us, our and each of our heirs, executors, and administrators, jointly and severally, firmly by these presents. Sealed with our seals and dated the 18th day of February, one thousand eight hundred and ninety-one.

Whereas the above-named Metropolitan National bank has prosecuted a writ of error to the Supreme Court of the United
89 States to reverse the judgment rendered in the above-entitled suit by the judges of the supreme court of the State of New York, in the county of New York:

Now, therefor-, the condition of this obligation is such that if the above-named Metropolitan National bank shall prosecute said writ of error to effect and answer all damages and costs if said bank fail to make said writ of error good, then this obligation shall be void; otherwise the same shall be and remain in full force and virtue.

HENRY A. HURLBUT. [L. S.]
WILLIAM H. LEE. [L. S.]

Sealed and delivered and taken and acknowledged this 18th day of February, 1891, before me—

[L. S.] THOS. S. WILLIAMS,
Notary Public, N. Y. Co.

UNITED STATES OF AMERICA,
State and County of New York, } *ss:*

Henry A. Hurlbut and William H. Lee, both freeholders in the State of New York, being duly sworn, depose and say each for himself that he is worth the sum of twenty-nine thousand seven hundred and eight dollars over and above all his just debts and liabilities.

HENRY A. HURLBUT.
WILLIAM H. LEE.

Sworn to this 18th day of February, A. D. 1891, before me—

[L. S.] THOS. S. WILLIAMS,
Notary Public, N. Y. Co.

Approved by—
WM. C. RUGER,
Ch. Judge C't of Appeals of New York.

90 [Endorsed:] Supreme court, county of New York. Sumner E. Claggett & Charles F. Chickering, adm'rs, &c., against Metropolitan Nat'l B'k. Bond for writ of error. Peabody, Baker & Peabody, attorneys for pl'ff in error, 2 Wall street, New York city. Service admitted of this bond. (S'd) T. H. Swift, att'y for def'ts error in court of appeals, by L. W. Russell.

91 UNITED STATES OF AMERICA, *ss:*

To Sumner E. Claggett and Charles F. Chickering, as administrators of the goods, chattels, and effects of James H. Paine, Greeting:

You and each of you are hereby cited and admonished to be and appear at a Supreme Court of the United States, to be holden at Washington on the 27th day of March next, pursuant to a writ of error filed in the clerk's office of the supreme court of the State of New York, in the county of New York, wherein The Metropolitan National Bank is plaintiff in error and you are defendant- in error, to show cause, if any there be, why the judgment in the said writ of error mentioned should not be corrected and speedy justice should not be done to the parties in that behalf

Dated Albany, February 24th, 1891.

WM. C. RUGER,
Chief Judge of Court of Appeals of State of New York.

91½ [Endorsed:] U. S. Supreme Court. The Metropolitan National Bank, pl'ff in error, ag'st Sumner E. Claggett, Chas. F. Chickering, adm'rs. Citation. Peabody, Baker & Peabody, att'ys for pl'ff in error, 2 Wall St., N. Y. Service of within citation is admitted. Feb'y 25, 1891. (S'd) T. H. Swift, att'y for defendant- in error in court of appeals, by L. W. Russell.

92 Supreme Court of the United States.

THE METROPOLITAN NATIONAL BANK, Plaintiff in Error,
against
SUMNER E. CLAGGETT and CHARLES F. CHICKERING, Administrators of the Estate of James H. Paine.

Assignment of Errors.

Afterwards, to wit, on the sixth day of March, in the year eighteen hundred and ninety-one, comes the said Metropolitan National Bank, by its attorneys, Peabody, Baker & Peabody, and Charles A. Peabody, its counsel, and says that in the record and proceedings in the above-entitled matter there is manifest error, in this, to wit:

I.

That the Metropolitan National Bank, the plaintiff in error, which was created under the act of Congress entitled "An act to provide a national currency secured by the pledge of United States bonds and to provide for the circulation and redemption thereof," approved June 3rd, 1864, is held liable to pay the bills described in the complaint, which were made by the Metropolitan bank, a corporation created under the law of the State of New York en-
93 titled "An act to authorize the business of banking," passed April 18, 1838.

II.

That the said Metropolitan National bank and the said Metropolitan bank are held to be the same corporation or artificial body.

III.

That the Metropolitan National bank is held to have contracted to pay the bills described in the complaint.

IV.

That the Metropolitan bank is held not to have closed its business before the beginning of this suit.

V.

That the Metropolitan National bank is held to be indebted to the defendants in error on account of any of the bills described in the complaint made by the Metropolitan bank.

Wherefore the said Metropolitan National bank prays that the judgment of the supreme court of New York be reversed.

PEABODY, BAKER & PEABODY,
Attorneys for Metropolitan National Bank, Plaintiff in Error.

CHAS. A. PEABODY, *Of Counsel.*

93½ [Endorsed:] Supreme Court. The Metropolitan Nat'l B'k, pl'ff in error, against Sumner E. Claggett and Charles F.

Chickering, adm'rs, &c., d'f'ts in error. Peabody, Baker & Peabody, att'ys for pl'ff in error, 2 Wall St., N. Y. Chas. A. Peabody, of counsel.

94 UNITED STATES OF AMERICA, *ss*:

The President of the United States to the honorable the judges of the supreme court of the State of New York in and for the first judicial department of the State of New York and county of New York, Greeting:

Because in the record and proceedings, as also in the rendition of the judgment of a plea which is in said supreme court of the State of New York, before you or some of you, being the highest court of law or equity of the State in which a judgment could be rendered in the said suit between Sumner E. Claggett and Charles F. Chickering, as administrators of the goods, chattels, and effects of James H. Paine, deceased, plaintiffs, and The Metropolitan National Bank, defendant, said judgment and the proceedings of said supreme court having been in all respects affirmed by the court of appeals of the State of New York, being the highest court of law or equity of the said State in which a decision could be had in the said suit, wherein was drawn in question the construction of a statute of the United States and the decision was against the title, right, privelege, or exemption specially set up or claimed under such statute of the United States, a manifest error hath happened, to the great damage of the said The Metropolitan National Bank, as by its complaint appears, we, being willing that error, if any hath been done, should
95 be duly corrected and full and speedy justice done to the parties aforesaid in this behalf, do command you, if judgment be therein given, that then, under your seal, distinctly and openly, you send the record and proceedings aforesaid, with all things concerning the same, to the Supreme Court of the United States, together with this writ, so that you have the same at Washington on the 27th day of March next, in the said Supreme Court to be then and there held, that, the record and proceedings aforesaid being inspected, the said Supreme Court may cause further to be done therein to correct that error what of right and according to the laws and customs of the United States should be done.

Witness the Honorable Melville W. Fuller, Chief Justice of the said Supreme Court, the 25th day of Feb'y, in the year of our Lord one thousand eight hundred and ninety-one.

[Seal of U. S. Circuit Court, South. Dist. New York.]

JOHN A. SHIELDS,
Clerk of the Circuit Court of the United States
for the Southern District of New York.

Allowed by—
WM. C. RUGER,
Ch. Judge of Court of Appeals of New York.

96 [Endorsed:] Supreme Court of the United States. The Metropolitan National Bank, plaintiff in error, against Sumner E.

Claggett and Charles F. Chickering, administrators, &c., defendants in error. Writ of error. Peabody, Baker & Peabody, attorneys for pl'ff in error, 2 Wall street, N. Y. city. Filed Feb. 25, 1891. Service of within writ of error is admitted. Feb'y 25, 1891. T. H. Swift, att'y for defendants in error in court of appeals, by L. W. Russell.

97 UNITED STATES OF AMERICA, *City and County of New York*, } ss.:

I, Leonard A. Giegerich, clerk of the county of New York and of the supreme court in the county of New York, by virtue of the foregoing writ of error and in obedience thereto, do hereby certify that the foregoing pages contain a true and complete transcript of the record and proceedings had in said court in the cause of The Metropolitan National Bank, plaintiff in error, against Sumner E. Claggett and Charles F. Chickering, as administrators of James H. Paine, defendants in error, as the same remains of record and on file in said office.

In witness whereof I have caused the seal of said court to be hereunto affixed, at the city of New York, in the southern district of New York, this — day of March, in the year of our Lord one thousand eight hundred and ninety-one.

[SEAL.] L. A. GIEGERICH, *Clerk.*

98 Supreme Court, First Department, Feb., 1889.

Chas. H. Van Brunt, P. J.
John R. Brady, } JJ.
Willard Bartlett, }

SUMNER E. CLAGGETT *et al.*, Respondents, *ag'st* METROPOLITAN NATIONAL BANK, Appellant.

Appeal from judgment by the court without jury.

Fisher A. Baker, for appellant; Leslie W. Russell, for respondent.

BRADY, *J.*:

99 The defendant, while a banking association under the laws of this State, and in 1865 having become a national banking association under the provisions of the act passed in that year (chap. 97), and desiring to retire its circulating notes issued whilst a State bank, proceeded to comply with the provisions of the act of 1859 (chap. 236) relating thereto. In its conversion to a national bank and in the proceedings under the act last mentioned to retire its notes every requirement was observed, and the question presented, therefore, *in limine*, is whether the act of 1859, the conversion having taken place, is applicable.

The learned justice in the court below held that it was not, for the reason that the act of 1859 applied only to banks having an in-

tention to close their business absolutely and not to those intending to continue under any other form.

It may not be necessary to add to the views expressed by the learned justice in the court below sustaining this proposition, but, nevertheless, a few observations will be indulged in.

It is true that by sec. 1 of the act of 1865 it is declared that its provisions shall be taken and deemed as an amendment of the laws of this State in reference to the banking business, and therefore they were engrafted on those laws; and for this reason, if no other exists, it must be conceded that whether it was the intention of the legislature to provide that the two proceedings should go on *pari passu*—that is, the national organization and the retirement of its notes by the bank whilst a State corporation—is a difficult and troublesome question.

The act of 1865, it must be observed, will be read in vain to discover any language except by remote implication which tends to express such a design. In the act of 1859, however, we find not only language indicating the expressed purpose of the statute to be
to facilitate existing State banks to retire their circulation,
100 but language from which that purpose, and that purpose only, is declared and quite manifest.

It provides, amongst other things, that there shall be a publication in the State paper by the superintendent of banking that the bank notes will be redeemed by him and must be presented within six years from the date of the notice, and that upon the expiration of such six years (all proceedings being regular) it shall be lawful for the superintendent to surrender to the banking association and it shall be entitled to receive from him all the money remaining in his hands after such redemption, except so much as may be necessary to pay the reasonable expenses chargeable against the accounts, including the publication of the required notices. The money so to be refunded is whatever remains of the amount required to be deposited in order to fully meet the outstanding circulation at the time the proceeding is initiated, whatever that may be.

By sec. 5 it is further provided that a banking association, after the payment of all the circulating notes issued by it which shall have been presented within the time required by the notice to be published, as already stated, and of all other lawful claims and demands against the bank, *it* shall divide the remaining property and effects of the bank among the stockholders thereof or their personal representatives according to the respective shares and interests therein.

It will at once be perceived that if the bank continues in another form, all its assets being transferred to the new formation by operation of the statute, the division contemplated by the section cannot be made, and in that respect at least the object and design of the act is frustrated. A provision of this kind would, by implication, if there were no express language leading to such a result, determine
the character of the statute and its purpose. It seems to be
101 a necessary corollary, if the distribution is to take place of any surplus, that the absolute death of the corporation is not

only contemplated but indispensable in order to carry out the provisions of the statute.

For these reasons, in addition to those assigned by the learned justice in the court below, it is thought that the judgment is correct and should be affirmed with costs.

Concur.

C. H. V. B.

I concur in the result.

W. B.

102 SOUTHERN DISTRICT OF NEW YORK, } ss:
County of New York, }

Fisher A. Baker, being duly sworn, deposes and says that he is one of the attorneys of the Metropolitan National bank in the foregoing case; that the court of appeals affirmed the judgment on the opinion of Judge Brady in the court below, which opinion appears above in full. Deponent further says that no opinion was delivered in the above case in the court of appeals of New York.

FISHER A. BAKER.

Sworn and subscribed before me this 12th day of March, 1891.

[Seal Theodore Kiendl, Notary Public, Kings County, N. Y.]

THEODORE KIENDL,
Notary Public, Kings County.

Cert. filed in New York county.

Endorsed on cover: Case No. 14524. New York supreme court. No. 1064. The Metropolitan National Bank, plaintiff in error, *vs.* Sumner E. Claggett and Charles F. Chickering, administrators of James H. Paine, deceased Filed March 17, 1891.

Office Supreme Court U. S.
FILED.
OCT 9 1891
JAMES H. [illegible]

Supreme Court of the United States.

THE METROPOLITAN NATIONAL BANK,
Plaintiff in Error,

vs.

SUMNER E. CLAGGETT, sued with CHARLES F. CHICKERING, who has deceased since the granting of the Writ of Error, as Administrator of the goods, chattels and effects of JAMES H. PAINE, deceased,
Defendant in Error.

To PEABODY, BAKER & PEABODY,
Attorneys for Plaintiff in Error:

Please take notice that upon the printed record herein I shall move this Court, at a term thereof to be held at the City of Washington, D. C., on the 19th day of October, 1891, at the opening of the Court on that day, or as soon thereafter as counsel can be heard, that the writ of error herein be dismissed, on the ground that this Court has no jurisdiction to review the judgment of the State Courts of New York

therein, and that no Federal question whatever is involved, and none was raised or decided in the suit or appears on the record; and I shall further move that said judgment be affirmed on the ground that, although the record may show that this Court has jurisdiction, it is manifest the writ of error was taken for delay only, and the question on which jurisdiction depends is so frivolous as not to need further argument.

Annexed hereto is a copy of my brief on said motion to dismiss or affirm.

Dated September 8th, 1891.

LESLIE W. RUSSELL,
Appearing specially for this motion as
Attorney for Defendant in Error,
32 Nassau Street,
New York City.

SUPREME COURT OF THE UNITED STATES.

THE METROPOLITAN NATIONAL BANK,
Plaintiff in Error,

vs.

SUMNER E. CLAGGETT, sued with CHARLES F. CHICKERING, now deceased, as Administrators, etc., of JAMES H. PAINE, deceased,
Defendants in Error.

Brief for Defendants in Error on motion to dismiss or affirm.

STATEMENT.

This action was brought in the New York Supreme Court by the defendants in error against the plaintiff in error, The Metropolitan National Bank of New York, to recover upon eighty-four promissory notes (in the form commonly known as bank bills or circulating money), aggregating $12,300. The bills were of various dates of issue from 1858 to 1861, and were delivered to the intestate James H. Paine in 1861. They were the bills of, and issued by, *The Metropolitan Bank of New York*, then a State bank organized and doing business under the laws of the State of New York, having authority to issue bank bills. The complaint alleged

that thereafter, and in 1865, pursuant to the Act of Congress of June 3, 1864, and the Act of the Legislature of New York of March 5, 1865, the said Metropolitan Bank of New York reorganized and became a National Bank (the plaintiff in error herein); and that such National Bank, by virtue of the laws of New York, and its own voluntary acts, became vested with all the assets of the old State Bank, and became liable to pay its obligations.

The National Bank had the benefit of the $12,300 paid to Paine in the bills of the State Bank in 1861 which it would have been obliged to redeem in 1865 if presented. It has had the interest earned on this sum for twenty-five years; it has had the securities pledged under the State law to redeem the State circulation, as it took all the assets of the State Bank, had the interest on those securities for twenty-five years, and now proposes to divide among its stockholders the additional profits gained by the deprivation of the representatives of the poor lunatic Paine by refusing to pay *now* the amount of the bills without interest, claiming a "Federal Immunity."

There is no dispute about the facts. The defenses set up were (1) a denial that the defendant assumed or became liable for the debts of the old State Bank; (2) that the old State Bank, subsequently to its becoming a National Bank, went through certain proceedings under certain statutes of the State of New York (Chapter 236, Laws of 1859, and Chapter 97, Laws of 1865), of publication and deposit with the Bank Superintendent of said State to call in its circulating notes, on the ground of its closing business, whereby it is claimed that its liability, and that of the defendant, on these bills (which were not presented for redemption)

terminated six years from March 14, 1867; and (3) the six years statute of limitations under the New York law.

Judgment went against the bank for $14,627.83 (including interest from date of demand in 1886) in the Supreme Court of New York. It was affirmed on appeal by the General Term of that Court, and by the Court of Appeals of New York.

Opinions at Special and General Term were given in the Supreme Court, but none in the Court of Appeals.

Thereupon this writ of error was sued out, and was allowed by the Chief Judge of the New York Court of Appeals.

Defendants in error now move to dismiss the writ on the ground that no Federal question is involved, and that this Court has no jurisdiction.

This is simply a common law case upon an assumption of liability in which the Courts overrule the defense of an exoneration from liability claimed on account of statutory proceedings in bar of such liability.

POINTS.

I.

The only clause of § 709 of the Revised Statutes under which jurisdiction could possibly attach is the one providing for writ of error where a title, right, privilege or immunity is claimed under a United States statute, and the decision is against the privilege or immunity claimed.

There is no Federal question under either of the other branches of § 709. Nor can any Federal question arise under either of the first or third defenses set up in the answer.

The rules in regard to jurisdiction in these cases are well settled.

If the facts of the case are broad enough to sustain the judgment on grounds entirely aside from any Federal question (if one exists), and the State Court puts its judgment on those grounds, no case is made for review here.

Murdock *vs.* City of Memphis, 20 Wall., 590.

Jenkins *vs.* Loewenthaler, 110 U. S., 222.

Johnson *vs.* Risk, 137 U. S., 300.

To give this Court jurisdiction, it must appear affirmatively not only that a Federal question was presented for decision to the highest State Court having jurisdiction, but that its decision was necessary to the determination of the cause, and that it was actually decided, or that the judgment as rendered could not have been given without deciding it.

DeSaussure *vs.* Gaillard, 127 U. S., 216.

Although a case from the highest Court of a State may involve a Federal question, yet if that Court proceeds upon another and distinct ground, not involving a Federal question, and sufficient in itself to maintain the final judgment without reference to the Federal question involved, its judgment will be affirmed here.

Beaupré *vs.* Noyes, 138 U. S., 397.

In determining the ground upon which a judgment in a State Court was rendered, this Court may refer to the opinion of that Court; and when it does not appear upon what ground the *highest* Court of a State placed its judgment (which is the case at bar), and the judgment may be supported without deciding a Federal question, this Court is without jurisdiction of it in error.

Wood Co. *vs.* Skinner, 139 U. S., 293.

II.

If the opinions of the Trial and General Terms of the Supreme Court be examined, it will be found that both Courts held that the plaintiff in error assumed the liabilities of the State Bank, taking all its assets, and that the New York statute providing for a redemption of circulating notes and releasing the bank, if the notes were not presented in six years, the construction of which statute was purely a State question, only applied to banks *closing their business*, and that the State Bank, by reorganizing as a National Bank, did not close its business.

In that connection (if anywhere) might be found the only color of a Federal question in this case, in that the bank says: (1.) That it became a National Bank by authority of Congress, and that no permission from the State was necessary in that behalf (citing *Casey* vs. *Galli*, *94 U. S.*, *673*, on that proposition); and (2), that therefore the effect of its having become a National Bank presented a Federal question for decision, and that it had acquired some privilege or immunity thereby.

To that claim there are several answers:

I.—The decision was so manifestly right that even if it did present a Federal question (which we deny), this Court should affirm the judgment on the ground that the Federal question (so-called) is frivolous.

There was no closing of business whatever. The directors did resolve in March, 1865, to close business, and then waited two years (until March, 1867) before going on with their pretended redemption.

In the case of the *City National Bank of Poughkeepsie* vs. *Phelps* (97 N. Y., 44), it was squarely held that such a reorganization of a State Bank into a National Bank was not the death of one institution and the creation of another, in that "the "general scheme of the National Bank act is that "State banks may avail themselves of its privileges, "and subject themselves to its liabilities, without "abandoning their corporate existence, without "any change in the organization, offices, stock-"holders or property, and without interruption of "their pending business or contracts. * *

"In substance there is no actual transfer from "one body to another, but a continuation of the "same body under a changed jurisdiction" (pp. "50, 55).

That decision was so plainly correct as to need no further argument. The corporation preserves its entity, property and good-will, through the merger, not closing but continuing its business.

II.—But assume that the grounds for the judgment contained in the opinions were erroneous, where is there any Federal question? The question still remains one of the effect of a New York Statute allowing the termination of a New York

bank's liability; and the only error of the Supreme Court of New York (if any) was in deciding *as to the fact* of the State Bank's closing of business. Where is there a United States Statute of immunity? Conceding that the defendant came into being by virtue of United States authority; yet where is there any immunity extended to that corporation by United States laws? The only law of the United States that can be directly or remotely invoked by the defendant is the National Banking Act of 1864. That act will be searched in vain for a suggestion of immunity to this defendant. The defendant's answer (in the record) admits that it "became vested with the assets, rights and property" of the State Bank. That fact entailed a common law liability on it to pay the State Bank's obligations. Did the National Banking Act, or any United States statute, purport in any way to give it any immunity or privilege from those obligations? Far from it. (See National Banking Act of 1864, page 112, §§ 44, 45). There is a provision for National Banks to terminate their liability on their circulation by proceedings of their own, and a deposit with the United States Treasurer; but there is nothing of that kind here.

III.—Moreover, the case of *Casey* vs. *Galli*, *supra*, was merely a question between the receiver of a National Bank and one of its shareholders, and in no manner involves the question of the right of a New York corporation, which received its charter from that State, to surrender that charter and get out of any obligations without the consent of the State, and upon such terms as it imposed. On the other hand, in the case at bar the defendant, or its predecessor, as appears by its own pleading and the findings of the Court, *did act*

under and pursuant of the State Law of 1865 (chapter 97) in reorganizing as a National Bank ; and therefore it must live up to its requirements.

It must be remembered that there is no Federal question raised by the answer in this case, and none raised by any request or any exception shown in the record ; and if resort is had to the two opinions given in the lower courts to see upon what grounds they based their decisions, it will also be seen that the only claim advanced was that of a New York corporation getting out of its liabilities under a New York law, and the decision was merely as to the effect of those State laws, and whether the corporation had brought itself within their scope ; and that decision presents no Federal question for review here.

III.

But even if the lower courts were wrong in the grounds of their decisions, as evidenced by their opinions, yet as the Court of Appeals gave no opinion, there is no question here for review, within the rule of *Wood Co.* vs. *Skinner*, *supra*, if there were any other grounds on which the decision of that Court might have been placed.

There were several such grounds ; and among others may be mentioned the following : (1) That the State laws under which these redemption proceedings purported to be carried out did not apply to the proceedings at bar, because the necessary statutes were not in existence at the time the proceedings were instituted ; (2) that the necessary statutes of New York to enable this proceeding to

go through were passed long after our contract was made with the bank, and that those statutes were unconstitutional in purporting to allow a termination of liability under a previous contract; (3) that the State statutes of withdrawing circulation and termination of liability only applied to the State Bank, and were only serviceable to allow its liability to be terminated, but did not affect the liability of the National Bank which had assumed and become liable thereon.

(1.) The redemption statute in force at the time our contract was made (in 1861) was Chapter 236, Laws of 1859. That was the only act in force also at the time they commenced their proceedings (March 21, 1865). Yet that act was never complied with by the bank; and it was only by virtue of subsequent acts, viz.: Chapter 476, Laws of 1865, and Chapter 348, Laws of 1866, that the proceedings purport to have been finished. But both those acts were passed after they had instituted their proceedings. Their proceedings were one single thing, all based upon the initial notice given in March, 1865.

Our position has been throughout that the Acts of 1865 and 1866 did not apply to proceedings already commenced; that both acts were purely prospective in their character, and would not be given any retrospective effect to bolster up proceedings theretofore commenced—especially a statutory proceeding to terminate the liability of a contract without payment, in which, if ever, the statute remedy should be most strictly pursued. That alone was enough for the Court of Appeals to have given the plaintiffs judgment.

(2.) The judgment also might have been put on the ground that these two Acts of 1865 and 1866

(even if held to apply to their proceedings retrospectively) were unconstitutional as against our outstanding contracts. We will show how that ruling would be sound.

The original redemption law of 1859 required the bank, before making its deposit with the Superintendent of Banks, to have redeemed *90 per cent.* of the circulation outstanding at the time of the initiation of their proceeding by giving notice of closing. They gave that notice March 24th, 1865. Their circulation outstanding then was $100,000. They were thus required to redeem all but $10,000 before they could deposit that balance with the superintendent, and go ahead. They never complied with that requirement, and never could have done so without redeeming a portion of our $12,300.

Then came the Act of 1865. That reduced the required percentage of redemption from 90 per cent. to 75 per cent. That was not complied with either. They never redeemed down to $25,000, as that act demanded.

Then came the Act of 1866. That reduced the required percentage of redemption from 75 per cent. of the amount outstanding when they started the proceeding to 75 per cent. of the greatest amount ever outstanding. That act alone enabled them to go ahead and make their deposit, and seek to get out of liability without further redemption.

Those acts, as against prior contracts, were unconstitutional

Sturges *vs.* Crowningshield, 4 Wheat., 122.

Ogden *vs.* Saunders, 12 Wheat., 213.

Bronson *vs.* Kinzie, 1 How. (U. S.), 311.

Matter of Wendell, 1 Johns. (N. Y.), 153.

Such statutes are not statutes of limitation. They do not provide for limiting time to bring any suit; they purport to terminate liability, which a statute of limitation never does. They would act on creditors outside of the jurisdiction of the State, which a statute of limitations never does. They do not purport to touch the remedy; they go to the root of liability itself. We say they were void as to our contracts; and that is ground enough to have sustained this judgment.

Of course such a holding of unconstitutionality of these State laws would not have presented a question for review here: to effect that, under Section 709 of the Revised Statutes, the decision must be in favor of the State law, and not against it.

(3.) Again, the judgment might be sustained on the simple ground that the State statute of termination of liability only purported to apply to the liability of the State Bank, and did not reach the liability of the National Bank. It does not purport to do the latter. If the other side is correct in their theory that the State Bank did close business in such a reorganization, there might well be reason for allowing the old bank to absolve itself from further obligation; but there was no point or reason whatever in allowing the National Bank to do so. It surely was not closing business: it was just beginning.

This view is emphazised by the fact that the National Banking Act had a method for ending the liability of the National Bank; and by the further fact that if the National Bank wished to get its liability terminated under the New York statute (assuming it could), then it itself must take and carry through the proceeding. The proceeding here was that of the State Bank; it was begun with its no-

tice of March 24, 1865, and continued from that starting point.

Any of these grounds were sufficient to uphold this judgment. At least they are not so frivolous that this Court will say that the Court of Appeals could not have determined to affirm the judgment on some or all of them, without considering any alleged Federal question at all. There is not the shadow of justice in the defense.

IV.

The motion to dismiss or affirm should be granted.

LESLIE W. RUSSELL,
Attorney for Defendant in error.
32 Nassau street, New York.

1064

Office Supreme Court U. S.
FILED.
OCT 16 1891

EVENING POST JOB PRINTING HOUSE—N. Y.

Supreme Court of the United States.

THE METROPOLITAN NATIONAL BANK,
Plaintiff in Error,

vs.

SUMNER E. CLAGGETT, sued with CHARLES F. CHICKERING, now deceased, as Administrator, &c., of James H. Paine, deceased,
Defendant in Error.

BRIEF FOR PLAINTIFF IN ERROR IN OPPOSITION TO MOTION TO DISMISS.

Statement.

All the evidence offered at the trial (p. 45) is contained in the findings of fact (pp. 36-42). The Court will search in vain for any evidence that James H. Paine was ever a lunatic, unless it can be inferred from the fact that he never demanded payment of the bills in suit, but held them for over twenty-four years, during which period the maker of the bills went out of existence, the plaintiff in error came into being, and after carrying on business nearly twenty years began to wind up on November 18, 1884, under its directors (p. 41).

By the laws of New York actions on contract, not

under seal, must be brought within six years from the time the cause of action accrued (§ 382, Code), but bank bills are excepted from the benefits of any Statute of Limitations (Code, § 393, Opinion of Court below, p. 47).

The assignment of errors is as follows: There is manifest error in this, to wit:

I.

That the Metropolitan National Bank, the plaintiff in error, which was created under the Act of Congress entitled "An act to provide a national currency secured by the pledge of United States bonds and to provide for the circulation and redemption thereof," approved June 3, 1864, is held liable to pay the bills described in the complaint, which were made by the Metropolitan Bank, a corporation created under the laws of the State of New York, entitled "An act to authorize the business of banking," passed April 18, 1838.

II.

That the said Metropolitan National Bank and the said Metropolitan Bank are held to be the same corporation or artificial body.

III.

That the Metropolitan National Bank is held to have contracted to pay the bills described in the complaint.

IV.

That the Metropolitan Bank is held not to have closed its business before the beginning of this suit.

V.

That the Metropolitan National Bank is held to be indebted to the defendants in error on account of any of the bills described in the complaint made by the Metropolitan Bank.

It is a "Federal question" whether the plaintiff in error, which was created under the laws of the United States is the same entity as the Metropolitan National Bank, which was created under the laws of the State of New York. Unless the plaintiff in error is the same bank as the State bank there is no ground upon which the judgment can be sustained.

The plaintiff in error insisted below that it was a National bank and that the bills were made by a different corporation. Also that the State bank was relieved from liability by statutory proceedings. The Court held that the plaintiff in error and the State bank were one and the same, and that the statutory proceedings were ineffectual because the State bank has continued to do business as a National bank.

POINTS.

I.

The Federal question was presented on the trial and decided adversely to the plaintiff in error.

The complainant alleges that the bills were made by the State bank (p. 3), and that the maker of the bills was created under State laws (p. 2).

The answer denies that the plaintiff in error made the bills (p. 34), and the Court finds that they were made by the State bank (p. 37).

The answer alleges that the plaintiff in error was created under the laws of the United States (p. 35), and the Court so finds (p. 41). The complaint also alleges that the plaintiff in error assumed the liabilities of the State Bank (p. 2), but this is denied by the answer (p. 34) and there is no proof of the allegation. If it had been found that the plaintiff in error assumed

to pay the bills, the Statute of Limitations set up in the answer (pp. 35 and 36) would have applied to such assumption. If it became liable to pay them it must have become liable more than six years before the beginning of the action. If the bills were made by the State bank and the plaintiff in error is liable to pay them though it never agreed so to do, then it must follow that the State bank and the National bank are the same bank. The opinion of the Court shows that the decision rested upon this ground. "The necessary result of this view of the law is that the change or conversion of the Metropolitan Bank to the Metropolitan National Bank did not result in a close of its business. It remained the *same bank* and went on doing business continuously" (p. 46). The General Term and the Court of Appeals hold the same (pp. 56 and 57) by approving the opinion of the trial Judge.

The opinion of the Court below will be referred to in determining upon what ground the decision was based.

Wood Co. vs. *Skinner*, 139 U. S., 293.

"It was held (p. 45) by the Court of Appeals in *City National Bank of Poughkeepsie* vs. *Phelps*, 97 N. Y., 44, that the general scheme of the National Banking Act is that State banks may avail themselves of its privileges and subject themselves to its liabilities without abandoning their corporate existence, without any change in the organization, officers, stockholders or property and without any interruption of their pending business or contracts. All property and rights which they held before organizing as National banks vested in them under the new status, and although in form their property and rights as State banks purport to be transferred to them in their new status of National banks, yet in substance there is no actual transfer from one body to the other, *but a continuation of the same body* under a changed jurisdiction. As between it and those who have contracted with

it, it retains its identity notwithstanding its acceptance of the privilege of organizing under the National Banking Act. When that case was decided in this Court, Gilbert, *J.*, whose view is endorsed by the Court of Appeals, said, 16 *Hun*, 158: "The change from a State to a National bank did not destroy either the existence or the identity of the corporation" (p. 45.) It may not be a Federal question whether the State bank ceased to exist. The courts of New York may finally decide whether it is now existing or not, but it is a question which the Supreme Court of the United States has jurisdiction to determine whether a bank created by the Federal authority is the same bank as one created by State authority.

Suppose a State Court should hold that the Union Pacific Railroad Company created under Act of Congress is liable on obligations made by the New York Central Railroad Company on the ground that the two corporations are identical, can it be held that the Supreme Court would have no jurisdiction to reverse such a decision?

II.

The Court did not hold the plaintiff in error liable because the State bank transferred its assets to the plaintiff in error.

If it did, such transfer took place more than twenty years ago, and the six years Statute of Limitations would apply.

The mere transfer of property from A to B does not create a common law liability on the part of B to pay A's creditors. A creditor of A may obtain judgment and by a suit in equity get a lien upon the property transferred to B and by proceedings in equity recover his debt. But here also the Statute

of Limitations would apply, and this Court will not assume that the New York Court ignored that defense which was duly set up in the answer.

The only way the judgment can be sustained is by holding that the contract of the State bank became the contract of the National bank without any change or modification.

III.

The plaintiff in error became a corporation without the aid of the laws of New York.

It complied with all the provisions of the Act of Congress, § 5154, Rev. Stat. U. S.

"Any bank incorporated by special law, or any banking institution organized under a general law of any State, may become a national association under this Title by the name prescribed in its organization certificate; and in such case the articles of association and the organization certificate may be executed by a majority of the directors of the bank or banking institution; and the certificate shall declare that the owners of two-thirds of the capital stock have authorized the directors to make such certificate, and to change and convert the bank or banking institution into a National association. A majority of the directors, after executing the articles of association and organization certificate, shall have power to execute all other papers, and to do whatever may be required to make its organization perfect and complete as a National association. The shares of any such bank may continue to be for the same amount each as they were before the conversion, and the directors may continue to be the directors of the association until others are elected or appointed in accordance with the provisions of this chapter; and any State bank which is a stockholder

in any other bank, by authority of State laws, may continue to hold its stock, although either bank, or both, may be organized under and have accepted the provisions of this Title. When the Comptroller of the Currency has given to such association a certificate, under his hand and official seal, that the provisions of this Title have been complied with, and that it is authorized to commence the business of banking, the association shall have the same powers and privileges, and shall be subject to the same duties, responsibilities, and rules, in all respects, as are prescribed for other associations originally organized as National banking associations, *and shall be held and regarded as such an association.* But no such association shall have a less capital than the amount prescribed for associations organized under this Title."

"No authority other than that conferred by Congress is required to enable a State bank to become a National bank. The power there conferred was ample and its validity cannot be doubted. The act is silent as to any assent or permission by the State."

Casey vs. *Galli*, 94 *U. S.*, 674.

The State bank, from abundant caution, complied with all the provisions of Chapter 97 of the Laws of New York for 1865. It therefore surrendered its charter in May, 1865, and in 1868, three years after, it ceased to exist for all purposes. The State law could not impose on the plaintiff in error the obligations of another corporation and it did not attempt to do so. The most that the State law says is that the law should not be construed as releasing the obligations of the old bank. No searching of the law will discover any provision making the two banks identical. (A copy of the State law is hereto annexed.)

The Court below says "if the Metropolitan Bank did close its business by becoming a National banking association the contention here made (by plain-

tiff in error) would be unanswerable, but merely changing from the State to the Federal system it did not close its business" (p. 45).

IV.

The question involved is not a frivolous one.

The New York Court of Appeals (*City Bank* v. *Phelps*, 86 *N. Y.*, 491) says this question "is not so easy of concession or refutation as it may seem at first sight."

A judgment for over $14,000 has been obtained against a corporation created by the National authority upon contracts which it never made and never assumed. Although a corporation during its existence continues to be the same body, the stockholders, whose property the corporation holds, change, and after twenty-five years very few persons are probably now interested in this matter who were stockholders of the plaintiff in error in 1865. The present directors are trustees winding up a closing bank, and it is their duty to ascertain with care who are the true creditors of the bank.

V.

For the above reasons appearing on the record the plaintiff in error submits that this Court has jurisdiction, that this writ of error was not taken for delay, and that the judgment should not be affirmed.

CHARLES A. PEABODY,
Counsel.

PEABODY, BAKER & PEABODY,
Attorneys for Plaintiff in Error,
2 Wall Street,
New York City.

CHAPTER 97.

AN ACT ENABLING THE BANKS OF THIS STATE TO BECOME ASSOCIATIONS FOR THE PURPOSE OF BANKING UNDER THE LAWS OF THE UNITED STATES.

Passed March 9, 1865.

The People of the State of New York, represented in the Senate and Assembly, do enact as follows:

SECTION 1. The assent of the Legislature is hereby given to the organization of associations for carrying on the business of banking within this State, pursuant to the provisions of the Act of Congress "To provide a national currency, secured by a pledge of United States stocks, and to provide for the circulation and redemption thereof," approved June, eighteen hundred and sixty-four, and the provisions of chapter twenty, article three, part first of Revised Statutes, entitled "Of unauthorized banking, &c., shall not apply to the association formed under or the notes issued in accordance with the Act of Congress aforesaid. And the provisions of this act shall be taken and deemed as an amendment of the laws of this State in reference to the business of banking. And every bank organized pursuant to the act of Congress aforesaid within this State, and every bank organized under said act in pursuance of this act, shall be deemed and held to be a banking institution for all financial transactions of the government of this State, and any and all officers thereof, the same as if organized under and in pursuance of the general banking laws of this State.

§ 2. Any bank incorporated or organized by authority of this State, which shall become an association for carrying on the business of banking under the laws of the United States, *shall be deemed to have surrendered its charter* if it shall have complied with the requirements of this act; provided, that every such bank shall nevertheless be continued a body corporate *for the term of three years* after the time of such surrender, for the purpose of prosecuting and defending suits by and against it, and of enabling it to close its concerns and to dispose of and convey its property; but not for the purpose of continuing under the laws of this State the business for which it was established.

§ 3. When a bank, at a meeting of the stockholders, has voted by two-thirds its number of shares to become such association, or its directors have procured in writing the authority of the owners of two-thirds of its capital stock to make the certificate required therefor by the laws of the United States, or shall, by a vote of the majority of the directors, have decided to make the change authorized in the discretion of such directors, such bank shall be deemed to have decided to become a banking association under the laws of the United States, and the cashier shall publish notice thereof for thirty days in such newspaper as the directors may select, and send like printed notice by mail or otherwise to all non-voting or dissenting stockholders, and shall also notify the Superintendent of the Banking Department of this State that said bank has decided to become a banking association under the laws of the United States.

§ 4. In case of a meeting of the stockholders of any such bank as aforesaid, each stockholder shall be allowed to cast one vote for every share of such capital so held by him or her, and may vote by

proxy; and any executor, administrator or trustee holding any such share may vote personally or by proxy without incurring any personal responsibility by said vote.

§ 5. When the charter of any bank is surrendered under the provisions of this act, the members of the Board of Directors last in office shall continue to be the Board of Directors of the new association to be formed under the laws of the United States, with power to take all necessary measures to carry out and perfect such organization, by signing the articles of association and the organizing certificate, and adopting such regulations as may be deemed just and proper, and not inconsistent with the act of Congress in relation thereto. They may reduce the capital stock of said bank to its par value by dividing the surplus among its stockholders, or may retain such portion of such surplus as they may deem necessary; and in case of an increase of the capital stock, under the provisions of the Act of Congress, may charge the shares of such increased capital stock with a like amount, to place the whole of such capital stock on an equality; and may award such new stock, or such proportion or fractional parts thereof, to such persons as they shall determine are entitled thereto, as provided in their articles of association and in the Act of Congress passed in relation thereto; provided, however, that new directors may be chosen at such time and in the manner provided in the articles of association and the Act of Congress aforesaid.

§ 6. When any bank has decided to become a banking association under the laws of the United States it shall be the duty of the directors immediately thereafter to proceed to execute and transmit to the

Comptroller of the Currency the proper certificates and other instruments for its conversion into a National banking association under the laws of the United States; and as soon thereafter as any such bank shall obtain the certificate of the Comptroller of the Currency authorizing it to commence the business of banking under the laws of the United States all the assets, real and personal, of the said bank shall immediately, by act of law, and without any conveyance or transfer, be vested in and become the property of the National banking association into which said bank shall have been converted; and it shall be entitled on returning the bills of such bank to the Banking Department of this State to receive the stocks pledged to secure the redemption of the same in the like manner as the bank issuing the same is now entitled by law, and shall be subjected to the same rules as State banks in respect to the final redemption of the circulating notes of such State bank so converted into National associations.

§ 7. The plates and dies of any bank so converted into a National association, and now in the Banking Department of this State, shall be forthwith so obliterated as to prevent all future use of the same, as provided by section five, chapter one hundred and eighty-nine of the Laws of eighteen hundred and fifty-seven, and any use of them in the manufacture of notes or bills shall be punished as a misdemeanor, on conviction, by Court having cognizance thereof.

§ 8. Nothing in this act shall be construed as releasing such association from its obligations to pay and discharge all the liabilities created by law or incurred by the bank before becoming such association, or any tax imposed by the laws of this State up to the date of its becoming such association, in

proportion to the time since the next preceding payment therefor.

§ 9. Any State bank which has, before the passage of this act, become a National association, by complying with the provisions of the Act of Congress in relation thereto, shall be entitled to all the benefits and subject to the provisions of this act, the same as if such conversion had been made after the passage of the same; and may amend or supply any imperfect paper, act or proceeding heretofore taken or omitted, so as to conform the same with the provisions of this act, without invalidating its conversion from a State to a National association heretofore made.

§ 10. All the shares in any of the said banking associations, organized under this act, or the Act of Congress mentioned in section one of this act, held by any person or body corporate, shall be included in the valuation of the personal property of such person or body corporate or corporation, in the assessment of taxes in the town or ward where such banking association is located, and not elsewhere, whether the holder thereof reside in such town or ward or not, but not at a greater rate than is assessed upon other moneyed capital in the hands of individuals of this State; provided that the tax so imposed upon such shares shall not exceed the par value thereof; and provided further, that the real estate of such associations shall be subject to State, county or municipal taxes to the same extent, according to the value, as other real estate is taxed.

§ 11. For the purpose of collecting such taxes, and in in addition to any other law of this State, not in conflict with the Federal Constitution, relative to the payment, imposition or collection of taxes, it is